# United States Court of Appeals for the Second Circuit



# **TRANSCRIPT**

# United States Court of Appeals

FOR THE SECOND CIRCUIT

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO BOTTOM MARSH and BROWN BROOK,

Plaintiffs-Appellants.

-against-

RUSSELL E. TRAIN, et al.
["Federal Defendants"], Defendants-Appellees, and
HERITAGE HILLS OF WESTCHESTER, et al.
["Private Defendants"],

Intervenors.

SUN ENTERPRISES, LTD., SOUTHERN NEW YORK FISH AND GAME ASSOCIATION, INC., LYMAN E. KIPP, RICHARD E. HOMAN, NO BOTTOM MARSH and BROWN BROOK,

Petitioners.

-against-

ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, RUSSELL E. TRAIN,

Respondent, and

HERITAGE HILLS OF WESTCHESTER, et al.

Intervenors.

Appeal from the U. S. District Court for the Southern District of New York

Petition to Review Order of U. S. Environmental Protection Agency

TRANSCRIPT OF DEC Hearing, Volume 6 of 9

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# THE STENOGRAPHIC RECORD

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#### In the Matter

of

the Application of HENRY PAPARAZZO and CURTIS McGANN, (HERITAGE HILLS) for the acquisition of a source of water supply, etc.

Water Supply Application No. 6284

October 4th, 1973 Town of Somers, N. Y.

PAULINE E. WILLIMAN
THOMAS P. FOLEY
CERTIFIED SHORTHAND REPORTERS
41 STATE STREET
ALBANY, N.Y.

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## In the Matter

of

the Application of HENRY PAPARAZZO and CURTIS McGANN (HERITAGE HILLS) for the acquisition of a source of water supply by the development of wells to ultimately supply 1.2 million gallons per day and the construction of a water supply and distribution system to provide service to a planned residential community consisting of approximately 3,000 living units known as Heritage Hills of Westchester County, for the construction of a dam approximately 20 feet high to create a pond having an area of approximately 1.6 acres on an unnamed tributary, known locally as Brown Brook, of the New Croton (Muscoot) Reservoir which is designated H-31-P-44-18 and which has been classified C(T), for the construction of a sewage effluent discharge structure, and for relocation of approximately 650 feet of the so-called Brown Brook to build a sewage treatment facility.

Water Supply Application No. 6284

# TRANSCRIPT OF CONTINUED PROCEEDINGS

in the above-entitled matter at a hearing held by the New York State Department of Environmental Conservation, at the Town Hall, Town of Somers, Westchester County, New York, on Thursday, October 4th, 1973, commencing at 9:30 o'clock a. m.

PRESIDING:

WILLIAM J. DICKERSON, JR., Hearing Officer.

APPEARANCES:

(As heretofore noted.)

# PROCEEDINGS

MR. DICKERSON: Ladies and gentlemen, this is a continuation of a hearing before the Department of Environmental Conservation in the matter of the application of Henry Paparazzo and Curtis McGann under Water Supply Application No. 6284 and related stream protection applications, essentially for the water supply and other aspects connected with the development of the condominium complex known as Heritage Hills of Westchester. Anybody who's not cognizant of the details of the hearing so far? I'm not going to bother going through the notice every morning.

We had two people undergoing crossexamination. Maybe we should have one assigned to
each recorder. Anyway, Mr. Blasi, do you want to start
your redirect or shall we finish Mr. Weber's crossexamination?

MR. BLASI: I would like to continue with Mr. Weber, if you don't mind. I didn't get the minutes until about 8:30 this morning.

MR. DICKERSON: Mr. Weber.

MR. WEBER: Yes.

### CALVIN E. WEBER,

having been recalled as a witness for and in behalf of the Westchester County Department of Health, having been previously duly sworn, was examined and testified as follows:

MR. DICKERSON: I believe, but let's be accurate, it was Mr. Florence.

CROSS-EXAMINATION
BY MR. FLORENCE: (Cont'g.)

- Q. In relation to the locating the outfall structure, as
  I understand or recall your testimony, you said that
  you had been consulted in relation to its location,
  is that an accurate recollection?

  A. That's my recollection.
- Q. All right. It's also the fact of the matter?
  A. Yes.
- Q. All right. And had alternate sites for the discharge of the sewer plant been given to you for consideration?

  A. There was -- there was another alternate site considered for the discharge a little bit upstream.
- Q. And that would be in the Brown Brook?

  A. Yes.
- Q. And in -- have you been given any information about the discharge or the collecting of water for storm

sewer, storm drainage, replacing the brook at the time you were making the judgment as to where you would have the outfall structure?

- A. The only information that's been presented to us is the information that's been presented here at this hearing as part of the exhibits, namely, that concerning the relocation of the stream and the dam and the impoundment structure. We have no detailed plans of the storm drainage for the project as yet.
- Q. Would that in any way affect your judgment as to the location of the outfall structure or the necessity for it?
  - A. Not necessarily.
- Q. May it have an effect?
  - A. I can't visualize at this point in time that it would in connection with this -- location of this outfall.
- Q. In relation to the relocation of the stream, were you consulted?
  - A. No, this -- the relocation of the stream is not a matter within the area of responsibility of our Department.
- Q. As to the location of the plant itself, the sewage

plant, were you consulted?

- A. The applicant did submit a waste water facilities report which indicated the location of the plant.

  We were not consulted as to whether we felt that this was the place for the plant to go or not. They indicate this on their plans and we evaluate from that viewpoint.
- Q. Now, the applicant -- are you generally familiar that the applicant's parcel actually encompasses what amounts to three basins or parts of three basins?

  A. I'm generally familiar with that, yes, sir.
- Q. The westernmost basin is the tributary that goes to the Brown -- to the Plum Brook?
  - A. I believe that's correct.

(Continued on page 986)

- Q. Are you familiar with the classifications of the stream?
- A. I'm not specifically familiar with classification of Plum Brook. I'd have to look it up in the classification index.
- Q. Maybe we can -- we'll get help. However, as far as the other two streams are concerned, they're generally categorized as intermittent streams, is that correct; that is, the Brown Brook would be categorized --
- A. The Brown Brook is categorized as an intermittent stream.
- Q. And the Question Mark Brook would be classified or do you know?
- A. Classified -- you mean as an intermittent stream?
- Q. Yeah.
- A. Based on the limited knowledge that I have of that Question Mark Brook, I would say that that would also be classified an intermittent stream.
- Q. Has your Department given final approval of either the location or the design of the sewage plant?
- A. There have been no approvals issued as far as the design, location of the sewer treatment plant are

concerned.

Q. In terms of managing the product of the sewage plant; that is, not the in-product but the outproduct, would it be sounder engineering principle to manage it on your own premises than on someone else's premises, in your judgment?

MR. BLASI: I object to the question unless we have a definition of "management."

MR. FLORENCE: If he can answer the question, I submit that he can answer the question and not be interjected by someone who doesn't like it.

MR. BLASI: Well, on behalf of the applicant, I think the applicant has a right to understand the question that's being posed to Mr. Weber and, under the circumstances, I object to the question as very vague.

MR. FLORENCE: You may interrogate at the time that it's your --

MR. BLASI: I think it's up to the Examiner to rule; I don't think I need an explanation from you.

MR. DICKERSON: I'm going to sustain

the objection.

MR. FLORE TOE: May I have the basis?

MR. DICKLESON: Very bluntly, what

you're getting at --

- Q. Can you control on somebody else's property as well as on the property of the applicant both the flow, the quality, the result any failure, either human or machine?
- A. The point of control of the quality of the effluent going from the waste water treatment plant is within the waste water treatment plant itself and once it leaves the last treatment structure there's very little that anyone can do to control the quality of the effluent. It will be going into a receiving stream at that point where it will be mixing with the waters in the receiving stream. The point of control is within the treatment units themselves.
- Q. Hypothetical failure, all right? Breakdown in some degree resulting in either a discharge from the plant of not totally or complemely treated effluent, that's the hypothesis, all right?
- A. O.K.
- Q. For best engineering or best engineering

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judgment, is it better or easier to control the water in terms of taking water where emergency methods would be appropriate on a parcel owned by the applicant or on somebody else's parcel for that treatment?

MR. BLASI: I object to the question as being completely vague. Unless Mr. Florence defines or pinpoints exactly where the failure is supposed to take place and the manner or method of the failure, I don't think Mr. Weber is in a position to answer that question, from my standpoint.

MR. FLORENCE: We now have got -we have a guy who's jumped into Mr. Weber's head.

I would respectfully submit that unless -- if he
can answer the question, let him answer it.

MR. DICKERSON: He's phrasing a hypothetical situation and we're going to get a hypothetical answer. I'm going to overrule your objection.

MR. BLASI: Mr. Examiner, I have no objection to a hypothetical question but I think even a hypothetical question has to have some certainty of it so to answer.

MR. DICKERSON: And I'm going to leave it to the expert witness to determine his answer on that.

MR. BLASI: Very good, sir.

(Continued on page 991)

A. The only place that I can visualize a hypothetical failure as you indicated in a waste water treatment facility, would be within one of the treatment units within the facility itself which would be on the property of the person responsible for the operation of that facility.

Therefore, any malfunction, any hypothetical malfunction or actual malfunction could be
handled by that individual party on the property which
is under their control. The outfall structure to
carry the treated effluent from the last treatment
unit to the receiving stream is merely a manner of
conveyance of treated waste water to that receiving
stream.

Q. That also would isolate, say, any of the persons who would be willing -- on the applicant's property from any offensive odors, if there were, say, a breakdown as there were no odor control or if there are odor controls somehow, that that particular nuisance wouldn't be manifest until it is discharged on someone else's property in this particular instance?

A. Not necessarily. If there is a breakdown in the treatment unit the problem will also exist on the site

of the treatment plant itself.

- Q. You've had experience with substantial plant breakdown over the years, have you not?
  - A. Yes, I have.
- Q. As part of your obligations with the County and Health Department, and I guess wearing your other hats on the state level as well, you have been concerned with the enforcement of quality control and in the breakdown -- and as it related to the breakdown of sewage plants?

  A. That's correct.
- Q. In point of fact, in recent history there are at least two breakdowns within the area of your jurisdiction?

  A. There is at least one.
- Q. All right, and has it been your experience that those people who are part of the operation bring that breakdown to your attention or has it been your experience that the people who bring the breakdown to your attention are those people who are not part of the operation of the plant but rather are neighbors or people to whom this waste water is conveyed, that is, their properties are either contiguous or part of the stream.

MR. BLASI: Mr. Examiner, I object to the question because it is wholly irrelevant,

incompetent and immaterial as to who in the past has made objections or not made objections. With reference to the application of this applicant on this water application and insofar as this sewage treatment plant relates to it, what difference does it make who made the objections?

MR. FLORENCE: I'm talking about control. I'm talking about human breakdown.

MR. DICKERSON: Objection sustained.

MR. FLORENCE: I respectfully except.

MR. DICKERSON: Noted.

MR. FLORENCE: Am I precluded now from asking about his experience of plant breakdown, where they occur, how they occur, where they come to his attention?

MR. DICKERSON: No, sir.

Has it been your experience, Mr. Weber, that plant breakdown comes to your attention by the operators or owners of the plant or by other persons?

MR. BLASI: Same objection.

MR. DICKERSON: Considering the rephrasing of the question, I'm going to overrule the objection.

Q.

- A. By both or one or the other, depending on the situation.
- Q. In your experience, is there a majority or do you have a recollection as to where you get the major thrust of the breakdown, whether you get that first from sources outside the plant or whether you get them from --

MR. BLASI: The applicant objects to this question. It's immaterial, incompetent and irrelevant with respect to this application.

MR. FLORENCE: May I address myself to this question?

MR. DICKERSON: Please.

MR. FLORENCE: First of all, it's the testimony, as I recall, of Mr. McPhee, that a breakdown is possible, that this plant is not breakdown-proof, and what I seek to elicit from the expert in this particular case is his experience as to generally in the field of breakdown, how it comes about, where he gets his information and what action he takes in relation to that.

MR. BLASI: May I be heard, Mr. Examiner?

MR. DICKERSON: Please.

MR. BLASI: We have on the stand a

highly qualified technical witness as to the technical aspects of the sewerage treatment plant.

MR. FLORENCE: I don't understand the objection.

MR. BLASI: Well, will you let me finish? Then you will understand the objection. If your questions start to relate as to who notifies the Health Department, whether it's the owner, the operator or whoever else, it is absolutely immaterial and it is prejudicial to this applicant because the inference is that we are going to run an operation that is going to break down, we're going to let it break down, we're going to sit there and let the breakdown continue, and as to that extent, it is prejudicial. If you want to get into the technical details of what caused a breakdown, and there isn't anything on God's earth that cannot break down, and there are safeguards that are built into it in accordance with the requirements, not only of Mr. Weber's Department, but the State Department of Health, the Department of Environmental Conservation, the Town of Somers and all the other agencies. If you are addressing yourself to the technical point, to a

qualified in that technical field, then I'm not going to object. But if you're going to go outside of that scope and start bringing in whether Mrs. Jones or Mrs. Brown smell something, or that the plant broke down and that Mr. Smith who operated the plant was such a skunk that he didn't call Mr. Weber, I say that that's improper questioning at this point and in this type of application. That might be all right if you are trying to influence a police justice on some violation, but not a technical man who's going into details of the plant and the operation.

MR. FLORENCE: You concede it's possible there will be a nuisance of odor?

MR. BLASI: I don't concede anything. We have built everything into this plant that can be possible fail-safe.

MR. DICKERSON: I sustain the objection at this point. If you want to discuss odor and those technical aspects of a sewage treatment plant I'm going to ask you to lay a groundwork for it. Mr. Weber has testified that in his experience he has received notice of breakdown of whatever type from

both the operators of the plants and others. We are not considering the design.

MR. FLORENCE: I understand that.

MR. DICKERSON: In detail.

MR. FLORENCE: That's why I'm not really going into that other than as it affects the quality of the water in the stream and my remarks are really limited to that. As I understand, there would have to be another hearing with relation to the design and location of the sewage treatment plant.

MR. DICKERSON: It is very difficult to draw the line between what's going to happen to the stream with these structures and I've been trying to get to the point of this. Now, we've got testimony from at least two witnesses that the quality of the effluent is controlled at or about the last point in the sewage treatment plant.

Q. What measures are you familiar with that could be taken in the event of a breakdown if any measures at all could be taken and where could they be taken once they came to your attention or the attention of the operators of the plant?

MR. DICKERSON: Mr. Florence, I'm going to interrupt. Would you please take the breakdown in the sewer collection pipes, breakdown in the sewer plant, breakdown in the effluent discharge pipes or what?

MR. BLASI: May I add one thing,

Mr. Examiner?

MR. DICKERSON: Yes, sir.

MR. BLASI: And I don't wish to appear

unreasonable and nasty about this thing.

Mr. Weber just got through testifying

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that the sewerage plant has not been approved in its final design and construction. Mr. McPhee testified to the details of the proposed sewage plant and the plans that were submitted.

MR. DICKERSON: Yes, sir.

MR. BLASI: These plans are subject not only to your approval but to the approval of Mr. Weber and to the approval of the State, Mr. Weber wearing his other hat, and to the approval of the Town. Now, if Mr. Florence wishes to address himself to some defect in those plans so that then it might be of aid and assistance to you as the Hearing Examiner and Officer; that is one field where you would have to rule on a specific question as it's asked as to whether it's relevant to that or not. But if he's getting into hypothetical questions of other plants, other situations, we could be here until August 1975, and I object to that.

MR. DICKERSON: What I am trying to get at for whatever reason, and it is not my choice, we have before us an application for the outfall structure itself.

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MR. BLASI: Yes, sir.

MR. FLORENCE: There are two things --

MR. DICKERSON: And obviously the implications of that structure, its design and its effect are matters for this hearing.

MR. BLASI: Yes.

MR. DICKERSON: Mr. Florence had started to ask a question about a breakdown, quotes, and I'm going to request that he be more specific as far as the details of the treatment plant. We have had testimony on backup capabilities within the plant. If he's going to inquire as to the general effectiveness of such backup capabilities, the general normal procedures that would be applicable to maintaining a treated condition or treated effluent being produced and arriving at this discharge stream I will allow it; but I'm going to ask him to be specific as to what he means, as to where this breakdown occurs, and tie it into the purpose of this hearing.

Now, if he wants to speak generally, we have on the record so far unchallenged testimony as to the fact that the treatment plant will have

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backup capabilities, a very general question on that I would say, probably would be in order.

The details of the sewage treatment plant are not before us at this time.

MR. BLASI: And may I just ask the Hearing Officer to take judicial notice of the fact that the operation and maintenance of the sewage plant is subject to regulations, both State, local and Federal.

MR. DICKERSON: I think that is a fact that is common knowledge.

MR. FLORENCE: May I also suggest to you, Mr. Dickerson, as the Hearing Officer here, the frustration of examination of two-thirds of this scheduled hearing is conditioned upon implicit approval of the site and the type of discharge of the sewage treatment for this project for which there has, to my knowledge, not yet been approval, although there are objections to that very thing or the nexus of our complaint with the State with which we have filed written objections and that they have seen thereafter fit not to include that as part of this hearing, and the frustration deals with

the vesting of interests; in other words, conditional approval of the relocation of the stream which would be academic if the plant is placed in another location, conditional approval of an outflow if in fact the same occurs, the different location of the plant. So I say essentially we are going at it backwards. I know that that's not any of the doing of the Hearing Officer.

Secondly, in limiting the scope of the hearing and not having a full impact hearing again is frustrating in that the size of the number of units proposed by this application and plan exceeds the number of one-family units already existing in this Town, in other words, more than double the number of one-family units. With that on the record, for no other reason, I will go back to my questioning of Mr. Weber. I just feel an obligation to keep things organized.

MR. DICKERSON: Yes, sir, we are always cognizant of the problems --

MR. FLORENCE: I don't know who selected the sequence of hearings or for what

reason but I strongly object. One of the very basic things that the State of New York and its authorities do is try to resist this vesting proposition, where a man does things by audacity rather than by permission. I think what we are doing here is we are playing into that theory rather than avoiding it.

MR. BLASI: Well, I want to note an objection to Counsel's remarks, because if there is any implication that this applicant is doing other than following the procedures required by the State of New York I wish to note for the record that this application is in accordance with the provisions of the Environmental Conservation Law and we have to start somewhere.

MR. DICKERSON: I agree with you, sir.

We recognize, I think, that a new Chapter of the

Laws of the State of New York have become effective

on September 1st, a date after these applications

were received and a date after the notice was

originally written, I believe, and this being,

and unfortunately, a human world, we're not perfect,

but we are trying to make the best we can of this,

and I've got to try to press for a conclusion of the hearing on these items and at the same time preserve the rights of all parties. It is comparable to walking a razor edge rather than a tightrope, but let's press on with it.

# 3/1/1 BY MR. FLORENCE:

- Q. Mr. Weber, are there -- have you studied the proposed sewer plant system as it has been suggested, has been at least forwarded to your Department for study?
- A. Yes, I have reviewed it. My staff has done detailed review of the plans.
- Q. All right, fine. Now, in relation to that review, are there not contingencies within that plan which, given certain other outside factors, will result in breakdown? I ask just only a suggestion, for example, possibility of power plant breakdown, the possibility of failure of either mechanical or hydromec anical factors; secondly, overloading or flooding.
- A. There is a possibility of power failure as there is with any operation requiring power and we have required that emergency generating equipment be

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- installed at least for the major treatment units within the plant.
- Q. That really wasn't the thrust of my question. I

  didn't mean to interrupt you, but what I'm saying

  is that rather than explain the backup systems

  that are proposed, address your answer if you would -
  if you could -- to the possibility of failure

  notwithstanding, you know, in this system as it's

  calculated as you understand it, those possibilities

  of failure. What can happen?
- A. Being that the plant does contain mechanical equipment and that it is dependent upon a power source, there is a possibility of power failure. There is a possibility of mechanical failure of certain of the units within the facility itself.
- Q. And is there a possibility of, for example, an act of God such as flooding which may in some way result in failure of the -- of the system to operate as it's designed to operate?
- A. Flooding in what respect?
- Q. Physical flooding, stream overflows.

MR. BLASI: I'm going to object to questions of acts of God. Acts of God can happen --

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acts of God can happen anywhere. We could have an atom bomb drop. Are you going to ask Mr. Weber what happens if an atom bomb drops? I think if you get to the technical details of what's in the plan, what his staff looked at and what they reviewed, fine.

MR. FLORENCE: May I see the elevations there?

MR. BLASI: But these are vague questions. You can ask me whether or not the Japanese are going to go to war against China and what the effect of it will be on this plant.

MR. FLORENCE: I may if you take

the stand.

MR. BLASI: Yes, and I'll tell you it's a ridiculous question.

MR. FLORENCE: Can we have the witness answer the questions, if possible, without --

MR. DICKERSON: Unless Mr. Blasi is willing to stipulate that acts of God may occur.

MR. BLASI: I would be an ass if I would not stipulate that acts of God would occur.

MR. DICKERSON: Which may not imply

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in any way --

MR. BLASI: The whole Town of Somers could be wiped out.

MR. DICKERSON: Yes, sir. I did not mean in any way to imply that --

MR. BLASI: And I'm a devout coward,

## BY MR. FLORENCE:

sir.

- Q. Are you generally familiar with the direction of the stream above the plant?
- A. Only generally.
- Q. All right, and assume, let's say, for a moment, that there is a breakdown because of excess rain causing either this channel not to be able to divert or change the direction of the water and the water continuing straight as it has in the past and that -- assume hypothetically that this area here does become flooded either because of natural rain or because of additional drainage coming in, in and about the area of the plant to the stream, or for whatever reason that this plant has flooding conditions in and about it.

MR. BLASI: Is Mr. Florence getting into the realm or the field of the stream location? If he is, I'm going to object to that. That's not part of Mr. Weber's function and he so testified.

MR. FLORENCE: I'm not talking about the stream location. I'm talking about the failure of the plant and I'm talking why it could fail.

MR. BLASI: You're relating --

MR. DICKERSON: Let's get this question a little clearer.

MR. FLORENCE: That's silly.

THE WITNESS: I'm not sure I understand

it.

MR. DICKERSON: I'm not sure I do.

Are you indicating --

MR. FLORENCE: I'm indicating failure in flooding.

MR. DICKERSON: Failure of the channel?

MR. FLORENCE: Yeah, failure of the channel, and the stream goes back to its original course and we have flooding at the plant.

MR. DICKERSON: Are you asking Mr. Weber if we wouldn't have flooding if it went back?

MR. FLORENCE: No, I'm asking what would happen if it floods. I'm not saying they're going to have flooding. I'm hypothesizing. I'm going to ask what happens to the plant.

MR. DICKERSON: From the plans in front of him?

MR. FLORENCE: Yeah.

THE WITNESS: As I understand the question you're asking me what would happen to the plant, the proposed sewage treatment plant, if the proposed stream relocation should fail upstream of the plant.

#### BY MR. FLORENCE:

Q.

No, I'm asking you what would happen to the plant if there's flooding in and about the area of the plant.

That's what I'm doing. I'm giving you one hypoundetical way there could be flooding of the several.

A. As I understand testimony that's been presented here and information that's been submitted as part of our applications and part of our files, this stream has been designed to handle a 100-year flood and the sewage treatment plant has been so located in elevation so that it is above the elevation of a possible

100-year flood in this area and if the stream relocation did fail, the sewage treatment plant, the operating structure of the sewage treatment plant, the main units would be at such an elevation that they would be above this 100-year flood water.

- Q. Now, Mrs. Daly is very upset with Mr. McGann. She sits right in the town here and they block it off, they block this channel and it floods and it floods all the water that would come down in here to the plant.

  Are you telling me that you can't have flooding in this plant; is that your answer?
  - A. What I'm saying is that on the basis that the plant has been designed in elevation, it is my recollection, such that the top of the treatment units, main treatment units, is above the elevation of a 100-year flood and the waters as such would flow around the plant, not necessarily into the plant because of the elevation.
- Q. What about structural -- all right. Now, what about structural settlement; is that possible?

  A. That would depend on how the units are constructed from a structural viewpoint, which is again not within my realm.

- Q. "ssibility of failure?
  - A. It's not -- depends on how they're constructed.
- Q. Then the answer is yes?
  - A. Well, if they're properly engineered and properly constructed the answer would be no.
- Q. That's right, and if that's also true, then there's no possibility of a breakdown?
  - A. It's true of anything, yes.
- Q. All right. But what I'm asking you to do is direct your attention to those possibilities where failure could occur.

MR. BLASI: I object to that now.

A. I'm not sure I understand that now.

MR. BLASI: I think Mr. Weber has gone into great detail to explain exactly the details of this proposed construction, that it has to be constructed in accordance with sound engineering principles. Now we're getting up to an Act of God again. This is what we're getting up to, Acts of God.

MR. DICKERSON: Can you comment?

MR. FLORENCE: I'm entitled to ask him about the possibility of failure and its results.

MR. DICKERSON: Yes, sir, he's answered

those questions. Do you have any question to the objection so stated, or any answer to the objection?

MR. FLORENCE: Well, certainly an Act of God like any other man-made act is irrelevant to the question. The question is what happens when there is a failure and how is it managed.

MR. BLASI: Mr. Weber has --

MR. FLORENCE: The cause is irrelevant.

MR. BLASI: He has detailed the construction. He has told you the plant has not yet been --

MR. FLORENCE: Why don't we have Mr. Weber testify rather than somebody else?

MR. BLASI: I have a right to comment on Mr. Weber's testimony.

MR. FLORENCE: I don't think you do.

MR. BLASI: Yes, I do.

MR. FLORENCE: You don't have any more right -- you have a right to object to the question.

You have no more right --

MR. DICKERSON: I'm going to sustain the objection. I'm going to ask us to take a two-minute break right now.

(Whereupon, a short recess was taken.)

4/1/1

MR. DICKERSON: Mr. Florence?

### BY MR. FLORENCE:

- Q. Mr. Weber, in your studies of the plant as it has been proposed, are there probabilities of breakdown?
- A. There are probabilities of breakdown with any mechanical equipment.
- Q. Where?
- A. Anyplace within the plant, any of the electrical equipment, power failure, failure of mechanical equipment.
- Q. As a consequence of any of these breakdowns, is

  there the probabilities or -- is there the probability

  of either partially or wholly untreated effluent

  to be discharged from the plant?
- A. That would depend upon what type of failure occurred within the plant.
- Q. Would that mean that under some failures there wouldn't and some there would?
- A. If there was a minor failure within the plant it
  would not have an adverse effect on the quality of
  effluent. If there was a major failure in the plant
  it could have an effect on the quality of the

- effluent. It's going to be dependent on the type of failure.
- Q. Now, let's take the hypothesis, where, as you say, the major failure, either man or machine, O.K., the equipment itself? What would be the result, what would be the manifestation or what would happen with this failure to the stream itself?
- A. This is going to be dependent on the nature of the failure again and its effect on the treatment process within the unit, and again it would have to be the type of failure which were not covered by backup equipment. It could have an effect on the effluent and if the effluent is affected to the extent where it can have an adverse effect on the stream there could be an adverse effect on the stream. This would be a massive failure within the plant.
- Q. How would a person know of the failure, not the operator of the plant, but say the person on the land through whose land the stream would traverse?
- A. If it's a real massive failure it's possible that
  he might have even been able to observe it due to
  turbid effluent being discharged or noting solids

being discharged or something of this nature, if it's a massive failure.

- Q. Would there be a possibility of an odor?
- A. There could be some odors if there was a failure of certain of the treatment processes, yes.
- Q. Are there any engineering methods to your knowledge to cure that failure within the stream itself?
- A. Depending upon the type of -- I'm not sure I really understand the question.
- Q. Let me try it another way. Is there a way to
  neutralize or to treat the effluent in the stream
  or has there been recognized engineering principles
  used in the handling of this kind of a failure?
  In other words, what does an engineer do, what does
  a specialist do when there is a failure in the stream,
  and again my answer, I would request that you answer
  it relating to the stream itself, not back up to the
  plant, but with what effluent you have in the stream.
- A. Well, let's make the assumption that the failure in the plant is such that you get a large concentration of settleable solids getting into the stream. This material could be physically removed from the stream.

  If the effluent problem is thus that it depletes

the solid oxygen in the stream before the time
it occurs, this could be corrected by a re-aeration
of the stream by either mechanical or natural
means. If it should affect the stream adversely
from a bacteriological viewpoint there are means
for providing for disinfection in the stream.

- Q. The disinfection, would that be with chlorine?
- A. Chlorine or some other suitable disinfectant.
- Q. Would chlorine in any way affect the life cycle within the stream itself or is there a way to apply chlorine without affecting it?
- A. Chlorine is going to affect the bacteria of concern within the stream which are a type of living organism and obviously it will affect life within the stream in that respect.
- Q. It would have a tendency to kill everything, in other words?
- A. Not necessarily. It depends on the concentration of the use.
- Q. Are there other uses or devices that could be used in lieu of chlorine that are acceptable or satisfactory?
- A. There are other chemicals that are used for

disinfection purposes, not necessarily used for sewage treatment, but there are other chemicals that are used.

- Q. In relation to the addition of drainage discharge have you approved any drainage discharge schemes into the stream or into your effluent pipe or to the discharge outlet of the structure ?
- A. Have we approved into the outlet? The outlet structure hasn't been approved, nor has the outfall structure been approved.
- Q. Well, let me take you to the engineering hypothesis, if I can enunciate it. Will the gathering of water by drainage pipe, of surface water, and directing it to a stream in any way affect either the velocity of the water in that stream as against the hypothetical vacant land prior to improvement?

MR. BLASI: Mr. Examiner, I think
we're getting over into the field of the Department
of Environmental Control and not Mr. Weber's field.

MR. FLORENCE: Mr. Weber certainly will be able to tell me if he's not able to answer questions.

MR. BLASI: It isn't a question of his

ability, because he has extreme ability. It is a question of jurisdiction.

MR. FLORENCE: I'm not talking about jurisdiction. I'm talking about his expert opinion.

(Continued on page 1018)

MR. BLASI: But your question is directed to the velocity and flow of a stream.

MR. FLORENCE: That's not jurisdiction, that's opinion.

MR. BLASI: But that matter relating to the stream is for the Department of Environmental Conservation and not for Mr. Weber who represents the State and County Department of Health. It's irrelevant to what Mr. Weber's direct testimony was.

MR. DICKERSON: Would you read that question back, please?

(The reporter repeated the question.)

Q. In other words, comparison.

MR. DICKERSON: I will allow the witness to answer that one question. I don't know if I
will allow any further questions in this area of this
witness. If the witness wishes to answer, he can
answer.

MR. FLORENCE: If he can answer.

MR. BLASI: If he can answer it yes or no, which he can't.

MR. FLORENCE: Would you like to switch seats with Mr. Blasi so he can help you with the

answers?

THE WITNESS: I can answer my own questions. I'd like to know where I am.

MR. DICKERSON: You've generally asked him a question outside of his area of expertise.

MR. FLORENCE: All he has to say he can't answer it.

THE WITNESS: Am I supposed to answer the question?

MR. BLASI: There is an objection.

MR. DICKERSON: Do you want to answer

it?

MR. BLASI: I would like a ruling

from you.

MR. DICKERSON: I said that I would permit the witness to answer the question if he felt that he could, but I would await motions on any forther questions on this line of questions.

THE WITNESS: I would like to have the question read back. I'm sorry.

(The reporter repeated the question.)

A. Installation of a drainage system to collect surface water from otherwise vacant land will increase the rate of runoff and concentrate the flow since you are putting in a storm water collection system, and this water in turn if discharged to a stream will increase the rate of flow to that stream during that period of time.

Q. Would it be a fair summary to say that by using a collection system you'll have a faster runoff of the total quantity of the water than you would otherwise?

MR. BLASI: I object to the question.

MR. DICKERSON: I can see what you are getting at or one possible avenue. I'll overrule the objection. Again, I'll see what the next question is going to be after this and rule on that one accordingly.

THE WITNESS: I hate to be a nuisance, but I'd like to have the question read back.

MR. FLORENCE: I would too.

(The reporter repeated the question.)

- A. You would have a faster rate of runoff than you would with the natural conditions.
- Q. Would it be fair then to conclude from that hypothesis
  that there would be in a given condition a greater
  tendency to flood downstream land than there would

without a collection system?

MR. BLASI: I object to the question.

MR. DICKERSON: Sustained. Let me ask one question: From your knowledge of the plans that have been submitted to you and your Department and the general background of the regulations of the county, to establish on the record, there would be separate surface and sanitary drainage systems for this development?

THE WITNESS: Yes.

MR. DICKERSON: This is a requirement?

THE WITNESS: Yes.

MR. DICKERSON: Thank you.

- Q. Will they deposit into the same stream as proposed presently?
  - A. Not having the full drainage plans for the entire project, I can't answer the question either yes or no.
- Q. Well, then would it be premature then for me to ask that question until you get that answer?
  - A. It would be premature to ask me that question, yes.
- Q. And would anyone else within the State of New York

  have those plans prior to you, or is it your sole -
  are you the sole responsible person for deciding and

okaying those plans?

A. The drainage plans?

- Q. Yes.
  - A. No, I'm not the sole person for approving the drainage plans.
- Q. Who else would be responsible?
  - A. The Town of Somers would be involved in the approval of the drainage plan and if they have an effect on stream relocation or dam construction, as indicated in this application, the Department of Environmental Conservation has certain jurisdiction.
- Q. Would you have an opinion as to whether or not it would create any damages to persons or properties downstream, either directly or indirectly?

MR. BLASI: I object to that question.

MR. DICKERSON: I'm going to go along with your objection. I'm going to ask you to rephrase that, what do you mean by that?

MR. FLORENCE: The two systems, the accumulation of storm drainage and deposit into some stream, together with the deposit of the sewage effluent into the Brown Brook.

MR. BLASI: May I pose an objection?

5-1-1

MR. DICKERSON: Please.

MR. BLASI: And may I make a statement in connection with the objection, why I object to it?

MR. DICKERSON: Yes, sir.

MR. BLASI: Mr. Weber has just testified that the drainage plans are under the jurisdiction of the Town of Somers and, as we know, the Department of Environmental Conservation. I think Mr. Florence is well aware, and I think you, Mr. Hearing Officer, must again painfully take judicial notice of the fact that in this ordinance and in this plan of development there are different stages with different approvals. This line of questioning addressed to Mr. Weber is improper because, first, he does not have any jurisdiction over it. Secondly, it is improper to ask him an opinion as to this -- as to these drainage questions because he has had nothing before him. If anything, these matters will be handled in sections which he must -- so that whatever his Department has to do, they have to do in sections.

MR. DICKERSON: I see.

MR. BLASI: So there is my -- the thrust of my objection.

MR. DICKERSON: I'm ready to make a ruling, but do you have any comment that you wish to make? I'm in the enviable position of going, I think honestly, both directions at once. I'm going to sustain your objection as regards to the surface water drainage. I'm going to overrule your objection to that portion of the question that's pertaining to the sanitary drainage. Now, if Mr. Weber can answer the question of his knowledge as to the effect on the health, safety and welfare of the people of the discharge of the effluent, he may do so.

MR. BLASI: Of the treated effluent.

MR. DICKERSON: Yes, sir, that's all.

THE WITNESS: As I understand the question, I am supposed to answer whether or not I have an opinion as to the downstream -- whether there will be any downstream effect on property or persons of the effluent from the sewage treatment plant, is that correct?

(Mr. Florence nods head.)

THE WITNESS: I really can't answer the question in the way I understand it because I have to know what kind of effect you're talking about, flood-

ing, adverse -- flooding, quality.

MR. FLORENCE: I'll take it back.

MR. DICKERSON: For the purpose of getting to it, do you want to let Mr. Weber pose the possibilities and bring them out that way or do you want to bring them out? We're mangling the question, but let's get to it.

### BY MR. FLORENCE:

- Q. Well, let's take each point. Let's talk about the quality of water, O.K.? The flooding first.
  - A. On the basis of information that's been submitted to us and reviews that have been made by members of my staff, I do not see where the quantity of water from the waste water treatment plant would create a flooding condition downstream.
- Q. O.K. Would that be fair to say in and of itself?A. In and of itself.
- Q. Now, that water is coming from a different basin, is it not, in other words that's in addition to the natural flow that the Brown Brook would ordinarily receive, that water?

MR. BLASI: The question is improper,
Mr. Examiner, and I object to it. The precise

tion.

question is the effect of the treated effluent.

MR. FLORENCE: I'm asking another ques-

MR. DICKERSON: Please do. We have an issue here that does pertain to the hearing.

MR. BLASI: I recognize that.

MR. DICKERSON: And I want to be lenient in getting these points on the record but I'm having some difficulty with phrasing some questions on both sides. Are you trying to -- it appears --

MR. FLORENCE: I'll rephrase the question.

MR. DICKERSON: It appears that you're trying to lay some groundwork for additional questions on this issue.

MR. BLORENCE: Yes.

#### 5-2-1 BY MR. FLORENCE:

- What about the quality of the water first?
  - A. The sewage treatment plant, if constructed, operated and maintained in accordance with the requirements of the Health Department in the respective jurisdictional agencies, there should be no adverse effect on the water quality of the water downstream.

- Q. Was your first word "if?"
  - A. I certainly will condition that answer, yes.
- Q. All right. Now, in relation to the waters that are discharged from the plant, the sewer plant, those waters are waters which are in addition to the normal runoff that the Brown Brook would handle, isn't that true?
  - A. I would say yes, since these are waters that are being derived from the ground waters of the area and being utilized in the project area.
- Q. All right. Is it your recommendation that they include not only the property as part of the application but in addition to that, other properties that would be or are proposed to be developed to the north ... this sewage treatment facility?
  - A. Is it my recommendation?
- Q. Yeah.
  - A. We have recommended that consideration be given to considering other projects adjacent to the project under consideration today.
- Q. How many or all others, whatever their name?

  A. There's only one to the north that I can recall.
- Q. Well, is it good engineering practice in terms of the

location of plants to have a lot of small plants or to have one consolidated large plant or is there a good engineering theory in relation to the size of plants and the location?

- A. Wherever possible, we like to see as few plants as possible.
- Q. Does that mean don't -- don't build the plant or does that mean larger plants as against smaller plants, one larger plant against two or three smaller plants?

  A. Ideally, I would agree if we could have one sewer plant to take care of all of Westchester County.

  Ideally. I agree it's not going to happen so you build the least number of plants that's possible, wherever possible. In some places it's possible, in others it's not.
- Q. Yes. Have you walked the downstream property on the stream?
  - A. I have not. A member of my staff has.
- Q. Did he report back to you the nature of the characteristics of the terrain?
  - A. Yes, he did.
- Q. All right. Do you have any information about that that you could tell us?

- A. I would have to check and review my files but we do have information in the files.
- Q. Would it refresh your recollection if I asked you if it's flat, level, marshy?
  - A. Parts of it are marshy, parts of it are flat.
- Q. Substantial amount of area?
  - A. I'd have to check the records. Without checking the records, I wouldn't want to answer the question.
- Q. All right. Do you have a record here on that?

  A. Yes, we do.

MR. FLORENCE: Can we have a moment to

MR. DICKERSON: Let's take a break for a minute.

(Whereupon, a short recess was taken.)
MR. DICKERSON: Ladies and gentlemen.
Are you refreshed, Mr. Weber?

THE WITNESS: Yes.

MR. FLORENCE: Have you got the answer?

MR. DICKERSON: O.K., ladies and

gentlemen. Mr. Florence?

### BY MR. FLORENCE:

do it?

Q. As I recall the question -- do you need the question

read again?

A. No, I believe I recall the question.

- Q. O.K.
  - A. There is a relatively well-identified streambed through the Kipp property consisting of a stream running through a marshy area which I would estimate as roughly 50 percent of the length of the stream going through the property at a flat gradient followed by a series of ponds, the last pond in the series being behind the Cricket Restaurant.
  - Q. Also known as the 19th Hole?

    A. Right.
  - Q. Is it --

MR. DICKERSON: Mr. Florence, for my edification --

MR. FLORENCE: Yes, sir.

MR. DICKERSON: -- with noreference to

the 19th Hole --

MR. FLORENCE: But the pond?

MR. DICKERSON: If you want to mark

where the Cricket Restaurant is on Exhibit 23.

## BY MR. FLORENCE:

Q. Well, Mr. Weber, relating your testimony to Exhibit

No. 23, is the pond to which you refer, the flat pradient into the pond, this pond which is identified as Elevation 232?

A. Yes.

Q. And would you mark that, outline that pond with a red colored pencil?

MR. DICKERSON: The lowermost pond just referred to has been outlined in red on Exhibit 23 and lies to the left of, on the map, and just to the west of, in reality, Route 100 and south of the Baptist Home.

MR. BLASI: I don't think he's got the right pond.

MR. DICKERSON: I think he said a series of ponds, the southernmost one.

MR. BLASI: Yes, but let's talk about the right pond.

MR. DICKERSON: Let's go off the record here.

(Discussion off the record.)

(Continued on page 1032)

MR. DICKERSON: Ladies and gentlemen, we'll get back on the record. Exhibit 23 has been marked.

Mr. Weber, would you please describe the markings?

circle around a black square on the map and labeled it "Cricket Rest." I have also marked a red line around a pond behind the Cricket Restaurant which I have now X'd out in red and have in turn marked a part of a series of ponds on Exhibit 23 with a red circle, the red circle being along a road or lane going to the west off of Route 100, and in my testimony I indicated that the gradient through the Sun property was relatively flat through the stream and a series of three ponds. I wish to correct that, to change that to a series of two ponds. At the end of the second pond I recall there is a dam.

- Q. What about the depth of the stream leading up from the northernmost portion of the property down into the ponds? How would you generally characterize it?
- A. There are portions of that stream which are

- relatively shallow. However, I have no direct personal knowledge of that stream.
- Q. Am I correct in recalling that you don't have a present knowledge of the identification categorization of the streams in the area? Did I ask you that yesterday?
- A. You asked me if I knew what the classifications of Plum Brook and Question Mark Brook were and I recall that I answered that I do not. I do know what the classification of Brown Brook is.
- Q. What is that?
- A. It is C(t).
- Q. Intermittent?
- A. C is the classification and (t) indicates the trout stream.

MR. FLORENCE: I don't have any further questions. Thank you.

MR. DICKERSON: Dr. Port, do you have any questions of Mr. Weber?

DR. PORT: Yes, sir.

PAULINE E W LLIMAN

THOMAS

### CROSS-EXAMINATION

### BY DR. PORT:

- Q. Good morning, Cal.
- A. Good morning.
- Q. Let's start off with the water supply, and I've been working with this all along as you probably have noticed, "Water supply wells to ultimately supply 1.2 million gallons per day." Now, Mr. McPhee spoke about this at some length and I'm interested in another expert's point of view, too, which may indeed be corroborated. But with respect to the source of water for this particular application, what effect do you feel that drawing 1.2 million gallons per day will have on abutters to this property? And I would say specifically in my own case, abutters in the general area of Warren Street.
- A. I believe that abutters in the general area of Warren
  Street are not in the same aquifer that the
  applicant is planning to take water from, that
  aquifer being one up along Route 100. Therefore,
  I would not expect that there would be any effect
  on the abutters' wells in that Warren Street area.
  There may be some effect on wells of abutters that

PAULINE E WILLIMAN

are in the same aquifer as the applicant is planning to draw water from and this is one thing -- information which we hope will be derived from this hearing.

- Q. Now, that specific question I addressed myself to Mr. McPhee and I think it's legitimate to pursue it with you, too, although my main interest is Warren Street. There appears to be an area as drawn on the map by Mr. McPhee which would include the areas of Dean's Bridge Road and the areas of Lake Purdy in that aquifer as a possible area of effect from the drainage of 1.2 million gallons a day. Do you also feel that way?
- A. As I indicated, if we also are in the same aquifer and draw on the aquifer as such to deplete or draw down the water in that area it might have an effect on wells in that same aquifer. I would have to answer it that way.
- Q. Good. That's fine. Now, the construction of a dam, as it says here, approximately 20 feet high, to create a pond having an area of approximately 1.6 acres, we've been told that this is at the moment at least for aesthetic purposes. Now, let's set

up the hypothesis that a year from now having had some difficulty or for whatever reason the applicant decides to take water from that pond to use it on, say, the golf course, what effect would that have on downstream people?

DR. PORT: It is a hypothesis, Mr.

Blasi.

MR. BLASI: Dr. Port, I admire and respect you very much and I don't want to seem unreasonable or obdurate. I have to press the same objection that I pressed with respect to Mr. Florence or I would be departing from the position of the applicant. I think, Mr. Hearing Officer, you will appreciate that I must interpose the same objection insofar as questions are addressed to Mr. Weber relating to the field which is the property of the Department of Environmental Conservation.

MR. DICKERSON: I'm going to sustain the objection with the observation that we will allow more than usual lenience to forms of questions from non-members of the bar. Dr. Port, I don't want to cut off your concerns. Mr. Weber

has testified or made a statement in basically two areas, that involving water supply and certain aspects of the sewerage situation.

DR. PORT: Does he have expertise in the area of the dam?

MR. DICKERSON: I will ask him to answer that question. It's a touchy one.

THE WITNESS: Yes. I would not consider myself an expert in dam construction.

- Q. Would you consider yourself an expert with respect to the water that does or does not come from the dam?
- A. That's another touchy one.

MR. DICKERSON: Again, from the point of view of water supply, I'm sure Mr. Weber would have several comments to make if that would be the purpose of the dam.

THE WITNESS: I'm not going to be difficult with you.

DR. PORT: I understand, and I'm not either, by the way.

THE WITNESS: I know you are not.

I appreciate that.

MR ICKERSON: Mr. Bibbo is going to return to the stand and Mr. Bibbo is the man for the dam. I think that would be the best way to phrase it rather than the other way around. I think we are skirting the edges of what Mr. Weber can handle.

DR. PORT: Let me proceed. O.K.

- Q. Let us make the assumption that for whatever reason under God's sun the water ceases flowing downstream, Brown Brook, what happens?
- A. There would be no flow downstream.
- Q. No flow downstream? Right. What happens in terms of my own pond or the pond jointly owned by Saia and myself?

MR. BLASI: Now, I must object.

I'm sorry.

MR. DICKERSON: I'm going to overrule the objection as I did with Mr. Florence and see what the next question after this is. There is a possibility, there is a possibility it is leading to something directed to Mr. Weber's expertise and possibly not. I'm not going to say.

A. On the assumption that there is no flow in Brown

Brook coming into your pond, there would be the possibility that there would be no flow to continue the volume within your pond, and assuming that the rate of evaporation is significant with no inflow it's conceivable that your pond would lose its volume of water and if it continued for a long enough period of time maybe even dry up. There are a lot of assumptions in hypothetical situations in there but that's the only way I can answer.

(Continued on page 1040)

- Q. Of course by definition, right? All right. Some people might classify that as a mudhole in that event, should that happen?
  - A. Some people might.
- Q. O.K., very good. All right, thank you. Next area.

  You have been presented with plans on the dam itself,
  right?
  - A. We have a copy of the plans, yes.
- Q. And, all right, I can see where I am going to have a problem here. O.K., I'll go to the next area. Do you know whether there is any shortage in New York State, in Westchester County, in the availability of chlorine?

MR. BLASI: I didn't hear that.

- Q. Chlorine.
  - A. There is a shortage of chlorine in northern New York State. I have no knowledge of any shortage of chlorine in Westchester County at this time.
- Q. O.K. That's a rather peculiar state of affairs, that one part of the state might have availability and another part of the state might not have availability, so I have to ask this question it seems: Is it something that is coming in the direction of Westchester

County?

- A. I really don't know. We're looking into this now so we can get more information on it and be prepared for any future eventualities, but I really don't know.
- Q. That's a very important statement. That's just what I wanted to hear. That's exactly what I was looking for. O.K. Very good.

So that there is a potential problem and an actual problem in the rest of New York State, northern New York State, with respect to chlorine, and if we are establishing in this project a rather large sewage plant that is at least something which your Department, as you have just said, has to look into it? Yes? Right?

A. Yes.

- Q. Very good. O.K. Now, Brown Brook and the relocation is not part of your project, right?
  - A. No, that's under the jurisdiction of the Department of Environmental Conservation.
- Q. O.K. Have you any information with respect to the pond, Saia-Port Pond?
  - A. In what respect?
- Q. I'm about to say. -- which pre-dates the application

of Heritage Hills?

- A. The only information that I am aware of that we have in our records is the information contained in the Biological Consultant's Report that Heritage Hills had prepared which pre-dates the application, and I believe is marked for identification as one of the earlier exhibits. There may be some information in our records of some samples we may have taken over the years but I have no personal knowledge of these and it would be quite a job to research our files back that far.
- Q. That's a valuable piece of information. O.K. There
  has been a siltation problem -- and the term "problem"
  I understand is a very broad word, Mr. Blasi, before
  we get any further --

MR. BLASI: It's a conclusion.

Q. It's a very, very broad word and I even said by myself and to the record as being a very broad word.

MR. BLASI: You are all right. You go right ahead.

Q. Very good. Now, having been some siltation in the pond and the potential of greater siltation in the pond, I said the potential, in terms of the change of

the brook, and we have to go with that with some other witness, I understand that, but in your expert opinion, what would be the kinds of things that I should look for in the event that siltation were to continue and to cause degeneration of some sort?

A. I'm not sure that I can really give you an opinion on that.

- Q. Could you explain why and then maybe I can get at it another way.
  - A. Well, one, this is an area in which I do not get into in a great deal. Matters of siltation, that is something that is handled primarily by the Department of Environmental Conservation. We do get into these matters from time to time as issues involving other matters. We really don't get involved in it to a great extent and I hesitate to really give an opinion. I'm afraid I might mislead you and I don't want to do that.
- Q. O.K., that's fair enough. In terms of the dam, is there a means of releasing pressure, to your knowledge, if it overflows or gets too much water in it or something?
  - A. It is my recollection of the plan for the dam

there are three means of releasing water from the dam, one through an opening about eight feet above the bottom of the pond at its maximum depth, also an opening at the top of the outlet structure, and there is also a valve at the bottom of the outlet structure.

DR. PORT: Is that valve on the inside or outside with reference to the water and the stored water, is it on the inside or the outside?

THE WITNESS: My recollection that the valve is on the inside of the intake structure with the handle being at the top.

DR. PORT: Handle being at the top,

O.K. Fine, thank you. I think that's all I have.

MR. DICKERSON: Thank you, sir.

Any representative of New York City?

(There was no response.)

Only to lighten the air at the moment, does the State Health Department representative wish to question the County Health Department representative?

MR. WEBER: No.

MR. DICKERSON: Mrs. Bahret?

7-1-1

BALLINE E WILLIMAN

THOMAS P FOL

(There was no response.)

Mr. Mally?

(There was no response.)

Mr. Gehler?

(There was no response.)

Mrs. Daly?

(There was no response.)

Miss Eustace?

(There was no response.)

Does Westchester County dare or do you

have any questions for this witness?

MR. ALEXANDER: I wonder if Mr. Blasi

may have some questions?

MR. BLASI: No, no.

MR. ALEXANDER: I have no questions at

this time.

MR. DICKERSON: I'm going to run down

the list. Mrs. Nardelli?

(There was no response.)

Mrs. Goldman?

(There was no response.)

THE WITNESS: Can I talk to my counsel

for a moment?

MR. DICKERSON: Please.

(Discussion off the record.)

MR. DICKERSON: Ladies and gentlemen,

Mr. Alexander, did you have a question?

MR. ALEXANDER: No, I will have no questions until redirect occurs. I don't intend to cross-examine him.

MR. FLORENCE: The state, you know, can ask --

MR. DICKERSON: I have to assume you're representing the rest of the county also. We have quite a barrel of notices.

Mr. Blasi?

# CROSS-EXAMINATION BY MR. BLASI:

- Q. Mr. Weber, just a few questions: You have, in your testimony, stated that the plant, the sewage treatment plant, has not been approved by your Department as yet, is that correct?
  - A. That is correct.
- Q. And there are certain procedures that must be followed with regard to that approval; am I correct in that?

  A. That is correct.

- Q. And the sewage treatment plant as such is subject to review of your office as to each detail of construction; am I correct in that?
  - A. As far as the treatment process is concerned, yes.
- Q. Yes. I am relating now to the treatment process.

  Now, is there any other engineering official that

  must also be satisfied as to the treatment structure

  besides the County of Westchester?
  - A. Yes, the Town of Somers, the City of New York,
    Department of Water Resources, and the State Department of Environmental Conservation, for whom we act
    as agent.
- Q. Now, in the course of the presentation of these plans, have there not been reviews of this structure with the City of New York?
  - A. Yes, there have.
- Q. And with these other departments that you have mentioned?
  - A. Yes, there have.
- Q. And these studies are continuing, am I correct?A. Yes.
- Q. So that then the finished product will be that which will have the acceptance in the sense of approval,

formal approval, as required by the statute by these different agencies; am I correct in that?

A. When and if approved, yes.

- Q. When and if approved. So that we are now in the stage before the Department of Environmental Conservation which is one of the stages?

  A. Correct.
- Now, the persons who are examining these structures are all qualified engineers, are they not?

MR. FLORENCE: Objection.

MR. BLASI: You object to that?

MR. FLORENCE: Yes.

MR. BLASI: All right, let me rephrase

it.

- Q. Obviously, Mr. Weber, you and your Department are qualified to review these structures, are you not, and that is the duty imposed upon you by law?

  A. Yes.
- Q. Now, the engineers that you have met with are whom as far as the City of New York is concerned?

MR. FLORENCE: I think it's irrelevant and I'll object to the relevancy of the question.

MR. BLASI: It's part of the process.

I'm entitled to show what the applicant is doing and what he has to do.

MR. FLORENCE: I think this hearing hasn't anything to do with what the applicant is doing.

MR. BLASI: I think the Examiner is entitled to have in the record what has been done with respect to the sewerage treatment plant to date.

MR. DICKERSON: I'm going to overrule the objection.

MR. FLORENCE: Are we hearing a --

MR. DICKERSON: I request Mr. Blasi to keep the procedural outline brief.

MR. FLORENCE: Are we hearing issues on the location and the plans of this sewage treatment plant, Mr. Hearing Officer?

MR. BLASI: I have gone into strictly the design of the structure. This is what Mr. Weber's questions are related to, the design of the -- the design and the plans of the treatment structure itself.

#### BY MR. BLASI:

- Q. Were there conferences with Mr. Egan of the City of New York?
- A. Yes, there were.
- Q. And Mr. Spyropoulos?
- A. Spyropoulos, I believe.
- Q. Mr. Spyropoulos was here. Was Mr. Marcon of the Town of Somers also present at some of these conferences?
- A. He was present at some --

MR. FLORENCE: I object to the form of that question. First of all, of my own knowledge, he's not of the Town of Somers, and, second of all, he's not qualified.

- Q. Is Mr. Marcon the Town Engineer of the Town of Somers, to your knowledge, Mr. Weber?
- A. To the best of my knowledge, yes.

MR. DICKERSON: You're stuck with that answer, Mr. Florence.

Q. And when you talked to Mr. Marcon, he appeared -he appeared before you in this -- when you took
notice of the list of people who were there, did
he represent himself to be the Town Engineer of the

Town of Somers?

- A. Yes.
- Q. And he participated in these discussions?
- A. Yes.
- Q. In the operation of a sewerage treatment plant,
  must not the applicant have the personnel available
  to meet the standards required by the State and
  by your Department?
- A. Yes.
- Q. So there must be an operator in attendance?
- A. Yes.
- Q And I'm assuming that the stage of the art of constructing sewerage treatment plant s takes into --

MR. FLORENCE: I'll object to the characterization that there's an art involved in the construction of a sewage plant.

MR. BLASI: There's an art in everything, even in -never mind.

MR. DICKERSON: Mr. Florence, you want to withdraw that objection and we'll just proceed with the questions on that point?

Q. Mr. Weber, the Department -- your Department keeps

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- up, does it not, with all the changes and improvements in the art of sewage treatment?
- A. To the best of our ability, yes, we do.
- Q. So that to the best of your ability --

MR. DICKERSON: For the record, may
we assume that by the term "art of sewage treatment,"
Mr. Blasi is also referring --

MR. FLORENCE: The business.

MR. DICKERSON: -- to the science of sewage treatment and --

MR. FLORENCE: Science.

MR. DICKERSON: -- the applied science of sewage treatment and the engineering thereof.

MR. FLORENCE: I don't object to anything like that.

MR. BLASI: Yes, and even the art of ludicrisy.

MR. FLORENCE: That's something different.

MR. DICKERSON: O.K.

#### BY MR. BLASI:

Q. Now, Mr. Weber, as, if and when the procedures, the preliminary procedures, have been pursued, you

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A.

will at that time evaluate the proposed sewage treatment plant on the basis of the latest available knowledge and expertise in that field, am I correct? That's correct.

MR. FLORENCE: I'm going to object to the line of questioning. We're going further off into the distance, the present intention to do a future act.

MR. BLASI: It's a matter of jurisdiction, sir.

MR. FLORENCE: It presumes continuing life as well as continued intention to do that which he states now.

MR. BLASI: I'm -- I move to strike those remarks from the record. I think they're impertinent and not necessary.

MR. DICKERSON: Your motion for striking will remain in the record as will the remarks.

Gentlemen, we never strike anything from an administrative record.

Mk. BLASI: Then I ask that you take notice of the nature of it.

MR. DICKERSON: And I take notice of

your remarks. I will allow brief comments if necessary, to support your positions but let's not bother with motions to strike.

MR. BLASI: I have no further questions.

MR. DICKERSON: Mr. Alexander, do you have any redirect?

MR. ALEXANDER: Just a couple of questions.

### REDIRECT EXAMINATION

### BY MR. ALEXANDER:

- Q. Mr. Weber, you were asked a few moments ago about possible chlorine shortage?
- A. That's correct.
- Q. Do you recall your testimony on that point?

  And you said that you were aware of a shortage possibly existing at the present time in northern New York?
- A. That's correct.
- Q. And you were looking into the situation?
- A. That's correct.
- Q. At this time. Can you tell us if you have any information concerning the priorities that might

be allotted in the distribution of chlorine in the event that a shortage should occur in this area?

- A. Consideration is being given to priorities at the Federal, the State and the local level so that in the event that a chlorine shortage does occur, that the chlorine can be directed to the facilities which need the chlorine, directed to the facilities of most importance.
- Q. Do you have any information concerning what types of facilities would be considered without giving any definite priorities?
- A. I can't give definite priorities.

(Continued on page 1056)

## BY MR. ALEXANDER: (Cont'g.)

- Q. Of a general nature?
  - A. Because matters have not been finalized but certainly water treatment plants and waste water treatment plants on public water supply watersheds will be given very high priority particularly in the realm of sewage treatment plants, waste water treatment plants, when it comes to assigning priorities. I am certain that the priority will be given to high -- high priority will be given to waste water treatment plants on public water supply watersheds.
- Q. And how would that affect thearea under consideration?
  A. This waste water treatment plant as proposed is located on a public supply watershed, that of the City of New York.

MR. ALEXANDER: Thank you.

MR. DICKERSON: Gentlemen, I'm going to just pollary further questions of this witness, further questions, rather than poll the list. Do you have any further questions?

MR. BLASI: I don't have a question but I have a statement in regard to a question that was posed by Mr. Weber in direct testimony yesterday

when he read his statement.

MR. DICKERSON: You have a statement rather than a question?

MR. BLASI: Yes.

MR. DICKERSON: Do you have an answer?

Would you hold it?

MR. BLASI: Yes, certainly.

MR. DICKERSON: Do you have any ques-

tions?

RECROSS-EXAMINATION BY MR. FLORENCE:

- Q. Well, would it jog your recollection if I asked you if
  Mr. Marcon was a consultant to the Planning Board of
  Somers, not the town engineer, nor would he be a consultant either to the Town Board or the Town Zoning
  Board of Appeals?
  - A. My understanding he's the town engineer.

MR. DICKERSON: Any other questions?

(There was no response.)

MR. DICKERSON: Mr. Blasi, make your statement, please.

MR. BLASI: Just, I wanted to answer

Mr. -- do you happen to have your statement there,

Mr. Weber? May I have it? It's in evidence?

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THE WITNESS: No, it's not in evidence.

MR. DICKERSON: It's in the record.

Got it?

THE WITNESS: Yes.

MR. BLASI: Thank you very much.

Mr. Examiner, I don't know the number of the exhibit. Is this statement in the record? It was read in the record?

MR. DICKERSON: It was read into the record.

MR. BLASI: Oh, very good, sir.

mendations or rather one of your requests, stated that
"the Westchester County Department of Health requests
that assurances be given on the record that the waterworks corporation will actively and promptly begin
investigation of an additional water source with
significant attention directed to the New York City
Delaware Aqueduct and that such secondary source of
water supply will be developed at a rate commensurate
with the rate of construction of the project to insure
a continuous supply of water for the proposed project."

As counsel for the Heritage Hills

Waterworks, Inc. I state for the record that the assurance requested by Mr. Weber, as I have read, will be immediately instituted and pursued.

MR. DICKERSON: O.K.

MR. WEBER: Thank you.

MR. DICKERSON: Mr. Weber, one

question: In your general testimony concerning the sewage treatment plant, you mentioned failure, minor failure, massive failure. You had words used such as the possibility of such failures and the probability. I personally recognize the distinction between the two words and their meaning. I'd like to take that one step further. Would you have any professional opinion as to the probability of a massive failure in the sewage treatment plant?

THE WITNESS: I'd have to qualify my answer. Assuming proper operation and maintenance and proper construction, the probability of failure would be remote.

MR. DICKERSON: Could you in any way quantify the probability?

THE WITNESS: I think it would be rather difficult and I don't think I could.

MR. DICKERSON: O.K. A massive failure though basically would be --

THE WITNESS: A major breakdown of major units in the case of this plant, where they're proposing three parallel treatment units, each to carry one-third of the capacity of the plant, we're talking about complete failure of one or more of the units, something of this nature, that would be complete failure for a massive breakdown.

MR. DICKERSON: And this would be relatively low probability?

THE WITNESS: I would say that's a relatively low probability.

MR. DICKERSON: Or possibility?

THE WITNESS: Or possibility.

MR. DICKERSON: Thank you, Mr. Weber.

You're excused.

(Whereupon, the witness was excused.)

MR. DICKERSON: Mr. Blasi, do you want to start your redirect on Mr. Bibbo or did you want to take about a two-minute break?

MR. BLASI: What time is it?

MR. DICKERSON: Let's go off the record

for a minute.

(Discussion off the record.)

MR. DICKERSON: O.K., ladies and gentlemen, who did you want?

MR. FLORENCE: Mr. Manna.

MR. DICKERSON: In order to make best use of our time and to have ample opportunity for direct or redirect examination and recross examination of Mr. Bibbo, Mr. Florence would like to call Ralph Manna for the purpose of establishing the stream classifications. If there is no objection, we can use the next 20 minutes or whatever to accomplish this purpose.

#### RALPH MANNA

called as a witness by and in behalf of the Objectants, having been first duly sworn, was examined and testified as follows:

MR. DICKERSON: Would you please sit down, state your name and affiliation.

THE WITNESS: My name is Ralph Manna.

I'm an engineer with the Department of Environmental

Conservation located --

MR. DICKERSON- Ladies and gentlemen,

just a little quieter please.

THE WITNESS: -- located at the

Regional Office in New Paltz.

# DIRECT EXAMINATION BY MR. FLORENCE:

- Q. How long have you been associated with the Department,
  Mr. Manna?
  - A. Approximately nine months.
- Q. And is your training and background dealing with the area of your responsibility with the Department?
  A. I have a Bachelor of Arts in Political Science and I have a Bachelor of Science in Civil Engineering.
- Q. All right, and have you had experience in the field within which you're working presently with the Department?
  - A. Yes, I have.
- Q. And how many years, briefly, was that experience?
  A. With my -- during my life with the Department, nine months.
- Q. Now, one of your responsibilities with the Department is to -- is the classification of streams in and about the area to which we refer in this application?

  A. Yes, it is.
- Q. And would you tell me what is the classification

of the Plum Brook?

A. I do not have the official classification book with me. They're in short supply. I have here what I have written down from previously and the -- the official classification of Plum Brook which is designated H.31-744-17 is B(t) in the area between -- in the area of Lincolndale.

(Continued on page 1063)

Q. Is there a classification of the tributary which traverses the part of the property subject of this application?

> MR. BLASI: Mr. Examiner, may we have the classification related to the geodetic on that exhibit that you have here?

> MR. DICKERSON: Yes, I think that's going to be simpler. With reference to Exhibit 23.

MR. FLORENCE: We'll do it that way.

MR. DICKERSON: Off the record.

(Discussion off the record.)

MR. DICKERSON: Ladies and gentlemen, let's go back on the record.

For a common point of reference,

Exhibit 23 has been marked up just a little bit more
and the stream classifications have been indicated.

on the various segments of the stream.

Plum Brook from a point west of Lovell Street down to a point southeast of Brick Hill Road has been marked with a black marker pen.

MR. FLORENCE: That's the property of Sun.

MR. DICKERSON: You can establish that

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fact. It has been marked with a black marker pen and the letters B(t), B classification with the parenthetical t indicating trout stream. The tributary to Plum Brook which has been referred to several times in the course of these proceedings has been outlined with black marker pen on Exhibit 23 and the caption D has been placed on it to indicate a D classification. A second tributary to Plum Brook east of the one frequently referred to in these proceedings essentially on the southern slope of the hill designated Round Top on Exhibit 23 has also been marked with black marker pen also indicating a D classification. The stream known locally as Brown Brook has been marked with a black marker pen from its point of discharge into Pond 57D on the official classification standards downstream to the Muscoot Reservoir and this black line has been also captioned as a D category.

The classification of what is referred to locally as Brown Brook from this point, Pond 57D, upstream to its source has been classified C(t) and what we have popularly referred

fact. It has been marked with a black marker pen and the letters B(t), B classification with the parenthetical t indicating trout stream. The tributary to Plum Brook which has been referred to several times in the course of these proceedings has been outlined with black marker pen on Exhibit 23 and the caption B has been placed on it to indicate a B classification. A second tributary to Plum Brook east of the one frequently referred to in these proceedings essentially on the southern slope of the hill designated Round Top on Exhibit 23 has also been marked with black marker pen also indicating a B classification. The stream known locally as Brown Brook has been marked with a black marker pen from its point of discharge into Pond 57D on the official classification standards downstream to the Muscoot Reservoir and this black line has been also captioned as a B category.

The classification of what is referred to locally as Brown Brook from this point, Pond 57D, upstream to its source has been classified C(t) and what we have popularly referred

to during the course of these proceedings as

Question Mark Brook or unnamed brook has been

marked with black marking pen and the letter C

indicating a C category. This has been marked

for terms of reference during the course of this

hearing.

The determining factor and the ruling guideline I'm going to handle by taking judicial notice of Part 864 of Title VI of the Official Compilation of Codes, Rules and Regulations of the State of New York, that portion having to do with the lower Hudson River drainage basin from the mouth of it to the northern Westchester-Rockland County lines. They are the official standards and I take judicial notice of them.

MR. FLORENCE: Would that judicial notice also include the Plum Brook to the south where it's already marked on Exhibit No. 23?

MR. DICKERSON: If you wish to bring it to our attention, that judicial notice will cover the entire lower Hudson River drainage basin from the mouth to the northern Westchester-Rockland County lines, thereby any reference you wish to make

to any portion of those streams will be adequately covered.

MR. FLORENCE: Thank you.

MR. DICKERSON: And they will -- the official descriptions in the Official Compilation of Codes, Rules and Regulations of the State of New York will be the governing factor overriding the exact limits as marked on Exhibit 23 for purposes of this hearing.

- Q. Mr. Manna, to your knowledge, are any of these streams intermittent?
- A. For purposes of waste water it's already been indicated in the reports that we are considering -- the Department does consider at least Brown Brook intermittent.
- Q. In actuality are any of the other streams that we have -- that you have designated on this Exhibit No. 23 intermittent?
- A. I would suspect that this tributary --
- Q. That would be south of Round Top, the tributary to which we have not yet referred in any of the previous testimony in this hearing.

MR. DICKERSON: For identification,

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- it is that tributary to Plum Brook outlined in black marker pen captioned with the letter D that exists on the south slope of the hill known as Round Top as shown on Exhibit 23.
- Q. Does that appear to you, Mr. Manna, to be in the basin that's to the west of the basin served by the Brown Brook, this tributary?
- A. I'm sorry, could you repeat that, please.
- Q. Yes. Does the basin --

MR. BLASI: Excuse me, but he didn't answer the previous question, did he?

MR. FLORENCE: If he didn't, I'm sorry.

MR. BLASI: He's asked another question before he's answered. I'm not trying to be difficult. I'm trying to be helpful.

MR. DICKERSON: Do you want to read back the last two questions?

(The reporter repeated the last two questions.)

Q. Are any of the others actually intermittent?

MR. BLASI: He didn't answer that question.

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MR. DICKERSON: That's what's before

him now.

- A. The tributary indicated by Mr. Dickerson's comment is, I would suspect, intermittent. As far as the other tributary of Plum Brook, I am not certain.
- Q. How about the unnamed stream?
- A. I am not certain of that either.

MR. BLASI: Question Mark Brook.

THE WITNESS: I am not certain of

that.

- Q. Plum Brook so far as you know is not an intermittent stream, is that correct?
- A. As far as I know it is not.
- Q. To your knowledge, the two D streams that are marked on the westerlymost portion of this Exhibit No. 23 are part of the westernmost basin involved in this application.
- A. They are tributaries of Plum Brook which has been identified as the westernmost basin draining at this project.
- Q. Certainly they wouldn't be a tributary if they weren't all in the basin, right?
- A. Yes.

- Q. Now, does the Croton River have a designation?
- A. Yes, it does.
- Q. Could you tell me what that is and indicate that?
- A. No, I can't.
- Q. The reason you cannot is that you don't have the --
- A. I do not have the official books with me and I'm -offhand I don't recall the official classification
  of the Croton River.
- Q. All right. Would it refresh your recollection if
  I asked you if it was an A?
- A. No, it wouldn't refresh my recollection. I believe that it might be but I could not say that it would be.
- Q. Is there a classification for the Muscoot Reservoir itself?
- A. Yes, there is. That is designated H-31.44.
- Q. Does that have a classification letter?
- A. Yes, it does. I cannot swear to that. However, I believe it is an A.

MR. BLASI: Mr. Hearing Officer, you have stated that you are going to take judicial notice of all this, are you not?

MR. DICKERSON: Correct. If you want

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to call attention to the classifications of those particular points, to the best of my personal recollection they are A to the Croton River and the Muscoot Reservoir. However, we will be guided by the Rules and Regulations.

THE WITNESS: Classifications are based on best usage and they are drinking water supplies. I assume that they are A.

- Q. Are you familiar with the policy of the Department not to discharge a sewage enfluent into intermittent streams?
- A. No, I am not. I am not an expert in that.

MR. VAZZANA: I'm going to object to any policy of the Department on that point, your Honor.

Q. Are you familiar with any rules, regulations or by-laws of the Department or any of the Departments dealing with the policy --

MR. DICKERSON: First of all, I'm going to sustain the objection. Secondly, would you please start your next question. You started to say, "Are you familiar with".

Q. Yes, are you familiar with the rules, regulations --

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MR. VAZZANA: May the --

- Q. -- by-laws or any other of the considerations governing the quality and purity of the laters of the State of New York as it relates to the deposit of sewer plant effluent?
- A. I am generally familiar with the Environmental

  Conservation Law. However, my primary responsibility is not waste water. I am not an expert
  in that field.
- Q. Your primary consideration, I mean your primary responsibility deals with siltation and sediment and violation with the stream laws, or stream laws.
- A. That is the primary portion of my responsibility.
- Q. Are you familiar with any violations on the existing property?

MR. BLASI: I object to that.

It's not relevant and material and prejudicial to this applicant.

MR. FLORENCE: I hope so.

MR. DICKERSON: I'm going to overrule the objection.

A. I am aware of Conservation Officer Kurka taking someone into -- yes, I'm aware of a violation

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that was taken care of by Conservation Officer

Kurka. I am not familiar with the details and

I can say no more on the matter.

MR.FLORENCE: All right, I don't

have any further questions, then.

THE WITNESS: Thank you.

(Continued on page 1073)

MR. DICKERSON: O.K. Mr. Blasi, do you

want to --

MR. BLASI: No questions.

MR. DICKERSON: Mr. Alexander?

MR. ALEXANDER: No questions.

MR. DICKERSON: Dr. Port?

DR. PORT: Will you clarify something for me before I even think about asking questions?

Could you give me the parameters of his expertise?

MR. DICKERSON: He had indicated to my recall that he had a Bachelor of Arts Degree in Political Science and a Bachelor of Science Degree in Civil Engineering and if you want to come up and ask questions of his qualifications, I think you'd better.

DR. PORT: All right.

## CROSS-EXAMINATION BY DR. PORT:

- Q. With respect to this application as against his academic background, with respect to these things before us, what areas are you familiar with and dealing with?
  - A. I work in the Office of Environmental Analysis.

    Basically, it is a coordinating function getting the

areas or the people with the primary responsibilities in the various fields to comment on these applications before the project -- before the Department, excuse me, and coordinating reviews with some review functions myself, however, not necessarily of an expert nature. They are basic questions of basic engineering. I would not consider -- I don't deal with many of the expert areas.

- Q. O.K.
  - A. Can you be a little bit more specific?
- Yes, that's what I'm going to do. That's the only way
  I can get at this.

A. O.K.

Q. What can you tell me about the relocation of the stream as it reflects upon your job?

MR. VAZZANA: Your Honor, I'm going to object to that. That's not within the competence of this particular witness.

DR. PORT: That's exactly what I asked and precisely what I asked.

MR. DICKERSON: What I think Dr. Port is trying to determine -- I can see one easy way out of this and I don't know whether we should explore it.

Maybe we'd better. Mr. Vazzana, it might serve the purposes of expediting these proceedings if Mr. Manna very briefly --

MR. VAZZANA: Then I'll withdraw my objection.

MR. DICKERSON: -- outlined the procedure, at least at his level, of how the applications are reviewed --

MR. VAZZANA: Then I'll withdraw my objections.

MR. DICKERSON: If he can do it briefly.

MR. VAZZANA: It can be done briefly.

MR. DICKERSON: I think it will either open or close the door for Dr. Port.

#### BY DR. PORT:

Q. Shoot.

A. O.K. Water Supply applications are received by the Albany Central Office. They are then distributed to the Regional offices. My responsibility is to review these applications for completeness, to identify possible problems, to get the information and the problems to the people within the areas or with the technical expertise to answer these problems.

P FOLEY

As far as stream protection, I have a -I have a function. I am an alternate local permit
agent. I have review capacities in that area. I can
process applications, distribute the information to the
biologists in our field office, to the various law
enforcement officers, solicit comments, again do review
of my own from a stream mechanic's standpoint and pass
on my recommendations, or I may actually sign permits
myself.

- Q. O.K. With respect to the stream mechanics, when you reviewed the application did you see any potential problems at all and then, secondarily, with respect to the downstream.
  - A. My own review of the project has indicated that-or excuse me, of the stream location, is that -- my
    own opinion, let me say that I think it can be -- can
    be a possible stream improvement. Not only will it not
    be adverse, I believe that it can possibly have some
    beneficial effects in that area.
- Q. How so?
  - A. How so? Conversations with our fisheries people indicate that it is not -- the stream is not an effective functioning trout stream. The various

proposals represent possibilities towards other fishery forms, perhaps the pond for bass or something, but I am not a fisheries man. I can't get into that.

- Q. Did you spot any other kinds of problems which you sought to consult with others on, raise a red flag about, question, ask about with respect to the application in your domain?
  - A. We've had -- we've identified various things throughout the course. Again I'm not totally confined to stream protection. Basically, we have tried to identify general problems and get them to the -- to the people who know the most. As I said, I don't consider myself at least yet in an expert -- the relocation? You're still speaking primarily with the relocation?
- Q. I am, but I'm very interested in hearing about anything else which you can refer to in your domain?
  A. Well, it's very difficult when you say my domain.
- Q. Because if I don't, Mr. Blasi will be on my back.

MR. DICKERSON: O.K.

MR. BLASI: I'm not that bad really.

MR. DICKERSON: Again let's break it off

in pieces. You want to field that question to the

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dam, the stream relocation and the discharge structure?

Take them step by step is what I'm asking, that's all.

MR. BLASI: It would occur to me the objections really would come from the Department rather than from the counsel for the applicant.

(Continued on page 1078)

MR. DICKERSON: I'm trying to refine it so we can at least have the question on the table.

MR. VAZZANA: Refine it if you can.

MR. DICKERSON: And I think we ought
to take it at least step by step if that's agreeable
to Dr. Port.

DR. PORT: Let's go.

MR.DICKERSON: O.K. Let's go.

THE WITNESS: O.K. With respect to the dam, let me say I have been sort of a coordinator between George Koch, John Stallmer and Leonard Bibbo. These are the people that have been primarily -- obviously, Mr. Bibbo is for the applicant, but these are the people that have been working primarily directly on the dam.

As a part of our stream relocation, part of my task was to consult with our local Fisheries people to see what was the case there, see if they would have objections to this, what the possible effects might be.

With respect to the sewer outfall, it's a simple construction detail, and I don't really

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see that it -- I don't really see it as being anything that -- that great. We are concerned with construction techniques to eliminate the possibilities of contamination by -- by concrete, by, you know, waste materials generally. What else?

- Q. What kind of contamination?
- A. Concrete in the stream, the reaction from concrete, due to spillage of oil into machinery perhaps in the stream, gasoline, various things.
  - Q. How has that been resolved?
- A. How has it been resolved?

MR. VAZZANA: I'm going to object to that because I -- that's irrelevant and immaterial and incompetent, the question of how it's resolved is not at issue here.

MR. DICKERSON: I'm going to overrule the objection.

DR. PORT: Yeah, I would think it certainly would, thank you.

A. As of yet, the construction specifications have not been presented to us. However, as part of the Department's summary, we will be asking for certain construction details.

- Q. All right. So you have some questions in mind about the construction and some are s that you are concerned about. Could you tell us what some of those kinds of things are?
- A. I believe I just have.
- Q. Would you spell it out again?
- A. Concrete in the stream, oil in the stream, gasoline in the stream, pushing in extra material in the stream.
- Q. O.K. Now, this relates to the dam?
- A. No, this relates -- you're talking about --

MR. DICKERSON: He's speaking about the latest -- the latest remarks refer to the -THE WITNESS: Sewer outfall.

MR. DICKERSON: O.K. Essentially again, if I can paraphrase, no sloppy work while you're building it. Don't dump your excess concrete in the water appears to be the drift of his thinking.

THE WITNESS: Yes, we also follow -MR. DICKERSON: Now, if you want to
carry this further, O.K.

THE WITNESS: Yes. We also follow DOT specifications if we can.

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- Q. Which relate to the same areas?
- A. Which relate to construction practices.
- Q. O.K. In your consideration of the stream relocation, what kinds of things have been raised to look at -
  I hate to use the words "be concerned about," -but at least to examine with respect to that stream relocation.
- A. Again disturbance of the fisheries in the area.

  We've considered that, we've considered the

  physical stream mechanics of this.
- Q. Physical stream mechanics, O.K. Like possible siltation?
- A. Siltation as a result of construction, yes.
- Q. M-m h-m-m.
- A. Yes.
- Q. O.K. And have you, in the process, made any recommendations on that?
- A. Yes, we've made several recommendations to Mr. Bibbo.

  Mr. Bibbo is also planning on forwarding construction

  details, but he has already indicated several

  construction notes that are generally acceptable.
- Q. What kind?
- A. There remain a few questions as far as seeding, the

exact type of grasses and things to be used.

These are not problems.

Q. In the process, has it been appropriate -- and I'm asking the question because I don't know -- has it been appropriate to get involved in the stream relocation insofar as potential fertilizers on the surrounding area to the stream, for example -- for example --

MR. DICKERSON: O.K.

- Q. -- phosphates and whatever on the golf course as it affects the stream?
- A. No, that's -- that is not.

DR. PORT: O.K. Fine, that's my questions. Thank you.

MR. DICKERSON: Thank you, Dr. Port.

I was just going to see if there are any other questions of this witness. If they're brief, we'll continue and if not we'll break for lunch.

Mr. Florence started. Mr. Blasi,
Dr. Port, Mr. Alexander, do you have any questions?

MR. ALEXANDER: No, I have no questions,

thank you.

MR. DICKERSON: I'm just going to go

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short. Anybody else got any questions?
Mr. Vazzana?

MR. VAZZANA: No, I have no questions.

MR. DICKERSON: O.K. If there are

no further questions, the witness is excused.

(Whereupon the witness was excused.)

MR. DICKERSON: Let's take a break and we'll aim for 1:15. We will start no later than 1:20.

(Whereupon at 12:30 p.m. a luncheon recess was taken until 1:15 p.m.)

MR. DICKERSON: Ladies and gentlemen, we finished with Mr. Weber and Mr. Manna before the noon break. Mr. Bibbo was on the stand. Mr. Blasi, do you wish to conduct any redirect of Mr. Bibbo?

MR. BLASI: Mr. Examiner, I have tried as best I could to examine the minutes since yesterday's hearing and during the time which Mr. Bibbo testified, and to the best of my ability it appears that the questions or many of the questions that I wanted to ask Mr. Bibbo were covered this morning in the testimony given, strangely enough by Mr. Weber collaterally in the sense that the line of testimony related to something that was not directly under his aegis. Nevertheless, in reviewing it and weighing the situation, and as to the volume of testimony that has gone in at this time, I do not wish to address any redirect to Mr. Bibbo.

MR. FLORENCE: Would that mean no?

MR. BLASI: That means at the moment

I'm not examining him, I'm not redirecting.

MR. DICKERSON: In that case --

MR. FLORENCE: No, no, no.

MR. DICKERSON: Mr. Bibbo, you have

already been sworn and I will exercise my prerogative for final questions, if I can find them.

MR. DANSKIN: Mr. Dickerson, we have several questions to address to Mr. Bibbo.

MR. FLORENCE: We had an uncompleted matter with Mr. Bibbo yesterday and it dealt with the results of the laboratories and the research on the water purity that we offered in evidence.

MR. DICKERSON: Let's relax for a minute, Mr. Bibbo, but don't run away.

Mr. Blasi, we do have an open item on the water analysis at which point you wished to determine the validity of the reports or at least their origins and I wish to determine where the samples were taken. Can we move on that point now?

MR. FLORENCE: I'm offering them in evidence again. I would submit to you that the caption of the examination indicates the source of the test itself, that is, the examination of the sample.

MR. DICKERSON: What I want to establish before we go any further, on one of them, 38-A, it says, "Sampling Point, stream, north end near Route 202, Sun Enterprises, Ltd." Am I to assume that that is what is referred to as Brown Brook, the sample was taken from the brook in the vicinity of the northern property line? And the Exhibit 38-B, it says, "Sampling Point, Reservoir No. 2, south end," pertains to what?

MR. FLORENCE: O.K. I'll inquire of
Mr. Bibbo. Maybe that would clear it up. That's the
body of water which is noted on our identified but not
offered for evidence pond?

MR. DICKERSON: That's what heretofore had been outlined in red as Exhibit 37 for identification with the caption"70 to 80 million gallon pond."

Thank you.

Now, Mr. Blasi, you said some items you wished to --

MR. BLASI: Well, my position, Mr. Examiner, with reference to these exhibits is this:

Let's take Exhibit 38-A first. Subject to the date and subject to what it shows, in other words, for what it's worth, I do not interpose an objection to 38-A.

As to 38-B I do object to the nomenclature of "reservoir" as I have consistently prior hereto and again both of these exhibits refer to a date of 8/7/72, so for what they show and for what they are worth insofar as they are ascribed specifically to these dates and with these reservations I do not object to their being in evidence.

MR. DICKERSON: Thank you, sir. I'll receive Exhibits 38-A and -B for what they are worth.

MR. FLORENCE: Mr. Examiner, could I make additional photostats so I can have a copy of them for my own file?

MR. BLASI: Here, you can make them from this.

MR. DICKERSON: That will satisfy you?

MR. FLORENCE: That's perfectly O.K.

I gave him a copy and I didn't have more than one copy.

MR. DICKERSON: Off the record.

(Discussion off the record.)

MR. DICKERSON: 38-A and -B received

into evidence.

(Exhibits numbered 38-A and 38-B previously marked for identification, were received in evidence, this date.)

Now, Mr. Florence, you say you had a

couple of questions of Mr. Bibbo?

MR. FLORENCE: That's really the only thing I wanted. I also wanted to tender in evidence for the limited purpose of showing the existence of the drainage area of the Sun Enterprises, the location of the pond, and its relation to the applicant's property, the exhibit identified as Exhibit No. 37, and for no other purpose. In other words, for limited purposes.

MR. BLASI: Mr. Examiner, I reluctantly must object to the introduction in evidence of this exhibit which is marked 37 for identification. This exhibit was prepared for a specific purpose and Mr. Bibbo had testified there were some inaccuracies with reference to this exhibit, specifically as to grades as they relate to that portion of the area at the intersection of 202 and Warren Street as it traverses southerly.

MR. FLORENCE: That's why I am limiting the application.

MR. BLASI: Yes, but we have had testimony of Mr. Weber this morning which was marked upon Exhibit 23, I believe, and this exhibit was made in 1971 and there are so many controversial features about it that I cannot consent to its introduction in evidence and I will request that the Examiner rely on Exhibit 23 rather than on this exhibit.

MR. DICKERSON: Will all parties stipulate that the topography as depicted on Exhibit 37 for identification is not present and true representations of the actual topography in the area?

MR. FLORENCE: Yes, the point of 37 is not shown. That was your objection?

MR. BLASI: My objection was that I don't want this in any way to be indicative of any proof as to any grades or other topography or the description of the land as such.

MR. DICKERSON: I will receive Exhibit

37 into evidence for the sole purpose of providing a

documentary reference point with the colored reference

marks that are made on it to correlate to the written

stenographic minutes. (Continued on page 1090)

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recalled as a witness, having been previously duly sworn, testified further as follows:

MR. BLASI: And for no other purpose.

MR. DICKERSON: For no other purpose.

MR. FLORENCE: Also to indicate the existence of the body of water that's on it. It's not on this map.

MR. BLASI: No, sir, it is on the geodetic.

MR. FLORENCE: Show it.

MR. BLASI: There it is and here it is marked. It was marked by Mr. Weber.

MR. FLORENCE: That's not the body of water.

MR. BLASI: What body of water are we talking to?

MR. DICKERSON: Off the record.

(Discussion off the record.)

MR. DICKERSON: Exhibit 37 will be received into evidence for what it's worth, for the limited purpose of supporting the printed stenographic minutes on the testimony that has been previously given to indicate the presence of a marshy area, a body of water and some filled land south and the location of the Port-Saia pond and the relationship of these

features with no comment as to accuracy of dimensions, relationship of these features to highway Route 202.

MR. FLORENCE: Also could we include that in relationship to the applicant's parcel?

MR. DICKERSON: I think that the implication of Port-Saia pond and Route 202 will establish a relationship.

MR. BLASI: With no concession on the part of the applicant as to the accuracy of any dimensions or other grades of topography.

MR. DICKERSON: I think I asked for a stipulation which appeared to have been agreed to that the topography was not factually based at the present time.

MR. BLASI: Right, sir.

MR. DICKERSON: O.K., do you have any further questions of Mr. Bibbo, Mr. Florence, or not really?

MR. FLORENCE: I'll just go through my notes. I don't have any.

MR. VAZZANA: Mr. Danskin has a few questions.

MR. DICKERSON: Mr. Danskin, will you

come up to the front, please.

# CROSS-EXAMINATION

## BY MR. DANSKIN:

Q. Mr. Bibbo, these questions are basically towards the applications for permit under the Stream Protection Program. The first series of questions will relate to the relocation of the stream to facilitate the siting of the sewerage treatment plant.

MR. FLORENCE: What's that? I didn't hear.

Q. To facilitate the construction of the sewerage treatment plant, the stream relocation.

Tell me, how long, in your best estimate, how long would construction take from the time you start to relocate, dug the channel, stabilized and broke through the terminal ends of the new channel to establish -- to establish the stream channel, to establish the stream flow in the new channel?

A. With the proper equipment the channel could be possibly dug in a few days. It would have to be cleaned up, stabilized, some seeds would have to go on and again a lot of that would depend upon the time of year,

germination and all, so we get some grass on the banks. Other than that I can't say another thing.

MR. DICKERSON: Would this be less than a year, more than a year?

THE WITNESS: Oh, yes, I'm talking in terms of a month, plus or minus maybe.

MR. BLASI: I didn't get that.

THE WITNESS: A month, plus or minus.

- Q. Hypothetically, that the approvals to relocate the stream were forthcoming within three or four months, let's say by the first of the year, when would construction start?
- A. If they were coming by the first of the year, it would depend on the winter season I would suppose, because if there is no frost in the ground and weather conditions are right construction would start immediately. If we go through a bad winter and snow it could delay construction quite a bit.
- Q. Rather than lead up to this quite ineptly, what I would like to do is in the event that general construction and relocation are required, for example, before April 1st, how will the banks of the stream be stabilized?

CERTIFIED SHOPTHAND REPORTERS

- A. You mean how will I get the grass to grow on it?
- Q. Yes, sir.
- A. It's a good question.

MR. FLORENCE: Hold it. I'm going to respectfully submit that we get testimony coming under oath and I'm reluctant to say anything --

MR. DICKERSON: Further than that.

Is there anything further to respond, whether that's a good question?

good question and I'm afraid I'm a little bit short for an answer right now. We could possibly peg some of the slopes. I suppose there are other methods. I would have to consult with somebody in landscaping. I would hope that approvals would come so you would be able to start during a growing season.

- Q. Do you have any general knowledge of the planned construction of this development?
- A. Yes, knowledge of it, when they intend to go?
- Q. Yes.
- A. I would say that as far as I'm concerned, and I don't know if this is part of their schedule, as far as

PAULINE E. WILLIMAN

CERTIFIED SHORTHAND SCHOOLER

- I'm concerned everybody is primed to go the minute the approvals come through.
- Q. Again, assuming that the approvals are forthcoming do you foresee or do you know that the schedule dictates that the construction of the sewage treatment plant begin by a certain date or terminate by a certain date?
- A. No, I don't know that.
- Q. Mr. Bibbo, I refer you to Exhibit 35. It's the revised plans for stream location. You have a channel capacity table indicated on the right-hand side.
- A. That's correct.

(Continued on page 1096)

- Q. You also have indicated that the width before of the channel is six feet?
  - A. That's correct.
- Q. Can you tell me what the average height, that is from the floor of the channel to top of the banks is throughout the section or will it vary considerably throughout the section?

A. Well, I suppose I could just go down and pick off three average sections and let's call it that because the slopes are graded in an average direction, they are not up and down as we go by. At the proposed channel elevation of 356 we have a bank elevation of 360 at that particular point. And there is an open area leading up to 362, 364 grade. We come down the stream, we have at the mid-point, we would have 355 again, bank elevation 360 leading to an open area, then 362, 364, and as we come down to the lower section of it we have the same condition, approximately the same condition, invert elevation of 354, bank grade of 360 leading to open area, much open area at that point.

MR. FLORENCE: What's that exhibit, 35?

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MR. DANSKIN: Yes, it is.

- Q. The range is then from six feet to something less than five feet from floor of channel to top of bank?

  A. Formal top of bank, and which is the channel section 4, call it pretty much a restricted area, this goes on a 1 on 1½ slope. If the slope widens it can carry some more capacity. I've left that part out.

  I assume it's restricted. At elevation 365 going to 364 I have eight feet of flow area. At elevation 355 channel invert to 364, I have nine feet. Elevation 354 to 364 and over, I have 10 feet.
  - In your testimony yesterday I believe you indicated that for small rises a 1 on 1½ slope would be stable.

    Do you consider a 10-foot difference a small difference?

    A. As I pointed out, 360 I have used a section of 1½ to 1, and this is minimum. Actually when I get over that elevation of 360 I've got even more capacity yet.

    I'm over-safe in everything I've done here. 360 is my formal channel at 1½ to 1 and at that particular point, at elevation 354 to 360 I have six feet. At elevation 356 to 360, I have four feet. Yes, I consider that stable.
- Q. In constructing the channel, the new channel, there will be excess materials or spoils, will there not?

- A. There will be some excess materials, yes.
- Q. What will the disposal of those materials be?

  A. Right adjacent to it. There is need for, you see some regrading lines in the area. There is need for regrading material. There is the old stream bank that this material can be stockpiled along and once the channel is cut can be used to fill that portion of it.
- Q. I'd like to now go to the sewer pipe outfall structure.
  A. Right.
- Q. Perhaps I should refer to the plan, Exhibit 26.

(Continued on page 1099)

BY MR. DANSKIN: (Cont tg.)

- Q. As I have interpreted these plans or I look at these, it appeared or I interpret them to be the installation of a pre-cast concrete box culvert, is this correct?

  A. That's correct.
- Q. What will the bearing surface or what will be necessary to support the structure?
  - A. Oh, it would take -- it's a very small structure, very lightweight structure, and you could probably put this on maybe 10 per square foot but the usual condition, of course, is to seek what we call solid bottom and, as you notice by the plans, even though it is a pre-cast structure it's not going to be laid down on the bed of the stream. You're going to cut into it and put in concrete base footings for it which will support this. Now, if you wish, I can compute the bearing pressure under each one of these footings. In addition to that, I have the ability of the surface underneath that to take this portion of the slab.
  - Q. That's not my desire. Are the -- are the concrete footings -- are they pre-cast footings?
    - A. No, the concrete would be poured in place.
  - Q. The concrete would be poured in place?

- A. And we would investigate until we got a good solid footing for the concrete and then pour the footings and the concrete would be laid on top of it.
- Q. Can you tell us what precautions would be taken during the pouring of the concrete so that the water flowing in the Brown Brook is not contaminated by poured concrete?
  - A. That will be something I would have to give some consideration to, possibly a new method of putting it in.
- Q. Do you recognize -- do you feel that the need for such precautions are legitimate?
  - A. Definitely they're legitimate. We can -- again, a lot of it, you wouldn't put this in at a time of high flow. You would put it in at a time of low flow and I could see where we could put a pump, a good sized pump in there and pump this water right past a good portion of it.
- Q. Use of a coffer dam or something like that?

  A. We can take this existing stone culvert and line that with some sandbags and some other material which would hold that material back, put in a good sized pump and just pump that water right on past the

excavation.

- Q. Will you be preparing and submitting to the Department of Environmental Conservation the plans for such precautions?
  - A. I definitely will. All my plans pretty much note a proposed channel, proposed pond, and I consider most of this to be the fairly -- what we want to do is evident. The methods by which we're going to do it will all be set down subject to the approval of the Department and the Department of Transportation.
- Q. I'd like to move to the area of the -- the broad area of the dam right now. I think, if I recall yesterday's cross-examination by Mr. Manna, you will be preparing and submitting a plan to the Department that will outline what procedures and what precautions you will be taking that will control and minimize turbidity and resultant sedimentation during the construction of the dam, during the excavation of the ponding area upstream of the dam; that's correct?
  - A. That's correct.
- Q. Once the dam is completed, all the structures, all the gates are completed, the dam -- the dam has to be closed, is this correct, or the -- the valve has to

be closed to fill the water area?

A. Not necessarily. I -- I think I stated in my testinony the day before that at the time of low flow, we would -- we can close that valve to, you know -- it was very low flow. In order to get any flow accumulated in the pond, you'd have to close the valve so, therefore, we would not fill that pond during a time of low flow.

- Q. You would maintain a flow?
  - A. That's correct.
- Q. And to the best of your control?

  A. That's correct.
- Q. Downstream during the period of filling?A. That's correct.
- Q. Whether that filling took three hours, three days, three months?
  - A. That's correct.
- Q. What would you use as a criteria for what -- what amount of flood flow would you maintain?
  - A. We have an 18-inch pipe in the pond, in the bottom of that pond and --

MR. DICKERSON: Speak up, please.

THE WITNESS: We have an 18-inch pipe

down in the bottom of that pond. I believe we can carry 15 or 18 cfs. flowing if you will, maybe a little bit more under that head, that head of pressure. If we kept 8 to 10 cfs. flowing through there during normal season, 5 cfs. flowing through there when normally only 3 cfs. might flow in the stream, we'd be in some -- at least a position to fill that -- to fill that pond up in short order. We've recorded flows in there and not during flood, as I said. We recorded flows in there of 35 to 40 cfs. in a period of May.

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- Q. The period, the activity that we're talking about now is the filling of the dam?
  - A. That's correct.
- Q. Once the dam is -- once the dam is full, the discharge of the dam is subject to the inflow in the impoundment?

  A. That's correct.
- Q. Less -- less what?
  - A. Less some possible evaporation which I consider to be negligible for a pond that size, less any possible seepage into the banks which, because of the material in the area, I consider to be relatively negligible.
- Q. May I ask if you're familiar with Exhibit No. 12 which

has, as I understand it, has not been entered into evidence, the Biological Base Line Study prepared by Emanuel Sorge?

A. No, sir, I am not.

Q. If I -- if I still may refer to it, I would like to.

One of the recommendations --

MR. FLORENCE: Hold it. If I may, just let's get the record straight on it. If he's not familiar with it, I submit that the line of questioning would be improper as to this witness in relation of it unless you wanted to ask a question simply that just by coincidence happened to be included in that survey.

MR. DICKERSON: O.K., if you want to --

MR. FLORENCE: Just simply ask the question in a direct way without reference to it.

MR. DICKERSON: Just let the chips fall where they may.

### BY MR. DANSKIN:

Q. Have you considered the significance of thermal stratification in the pond?

MR. BLASI: I don't understand the question.

MR. FLORENCE: You don't understand

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the question?

A. I don't even think I understand the answer.

Q. Is there a potential for thermal stratification in the pond?

MR. FLORENCE: Wait a minute.

MR. BLASI: Wait a minute.

A. Well, I couldn't possibly -- I couldn't possibly even begin to answer that one at this point in time.

MR. DANSKIN: I have no further questions, thank you.

MR. DICKERSON: Let's go off the record. When you ask them, Mr. Danskin, you ask them.

(Discussion off the record.)

MR. DICKERSON: Anybody else got any questions for Mr. Bibbo?

MR. FLORENCE: Yes, I do.

MR. DICKERSON: Short?

MR. FLORENCE: Yes.

MR. DICKERSON: Go.

### BY MR. FLORENCE:

Q. Taking in consideration the last question now, you did say that you were going to have discharge or there's a likelihood of discharge from the bottom of the pond,

is that correct?

- A. I stated that the other day.
- Q. Yes. Isn't that also where the silt would be gathered or the particles of silt or sedimentation would be located?
  - A. Yeah. The -- the way the pond is, the way the pond is designed and the way the drainage is coming in, almost 85 or 90 percent of the drainage is coming in at the upper end and that's where you'd probably get some silt.
- Q. Well, as between the top and bottom of the pond -A. And again -- again --
- Q. -- thermal --
  - A. We do have a stilling basin which would be the form of stilling basin, jump basin if you will, hydraulic jump basin, which would reduce some of these velocities. We're talking about silt coming down the stream. The silt would drop out. We've already said that we would take whatever precautions are necessary including placement of bales of hay, et cetera, et cetera, et cetera. I can't impress upon anyone any more than this one fact: We want to build a project-I'm speaking for myself and on behalf of this firm,

as far as I've been authorized to do -- we want to build a project, if you'll pardon my French, we're going to build a damn nice project. We do not want to interfere with the people in the area. We'll take every precaution necessary. We've invited and we will continue to invite the necessary government agencies, governmental agencies, to come down and take a look with us and help us out. We'll seek advice and I can't answer you any more than that, Mr. Florence.

- Q. All right. Wouldn't it be -- wouldn't it be consistent with that policy to have an outdraw that would minimize the possibility or minimize the likelihood of inclusion of silt in the bottom of this pond in the discharge other than come over the top of your dam?

  A. Can I have an outfall?
- Q. No, wouldn't it be consistent with the policy you've just stated trying to minimize the effect of the creation of the pond upon the neighborhood and the downstream owners to have an outdraw pipe, a pipe besides for the source of waters, that would be impounded by this dam, some place besides at the bottom to give you control, permit outflow at times you don't have an overflow from the top of your dam?

A. This is what -- I have an 18-inch pipe down below with a valve on it that can be opened up any time it's wanted.

MR. DICKERSON: Can I attempt to clarify this point?

MR. FLORENCE: Yes.

MR. DICKERSON: What you're essentially trying to get at is this 18-inch pipe up and off of the bottom, is that enough that the silt won't flow out through it, is that it?

MR. FLORENCE: Yes.

MR. DICKERSON: So that it won't suck up silt?

of the pond it will be sucking sand and silt out with it unless it's raised substantially above that.

MR. DICKERSON: O.K.

THE WITNESS: I believe I would have to have a little elevation above that for the pipe, rather than having to raise this pipe up.

MR. FLORENCE: I don't think I understood the answer.

MR. BLASI: He's saying the same thing

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you are.

THE WITNESS: Just a different method of doing it.

- Q. In other words, you'd rather dig it deeper than raise the pipe?
  - A. I'd rather have that little ball sitting down below it than raise the pipe up, that's right.
- Q. Is that reflected on your plan that's in evidence?A. It's a point you just brought up.
- Q. Yes.
  - A. I'll take it into consideration.
- Q. O.K. Then --

MR. DICKERSON: Just for --

- Q. (Cont'g.) Then the answer would be no as far as that particular aspect of the -- of the outflow. It's not on these plans at present?
  - A. No.
- Q. Or am I incorrect?

MR. DICKERSON: This is what I'm trying to clarify.

MR. FLORENCE: I don't understand the point.

MR. DICKERSON: The plans show at least

a one-foot difference between the bottom of the pond and the bottom of the pipe.

MR. FLORENCE: O.K.

MR. DICKERSON: Now --

MR. BLASI: That's your point.

MR. FLORENCE: Yes.

MR. BLASI: Right there, already pro-

vided for.

MR. FLORENCE: Well, we didn't get these when we looked at them.

MR. BLASI: All right, clarified.

MR. DICKERSON: O.K. Anything else?

MR. FLORENCE: I don't think so. I

just -- let me just take a look at my notes for a minute.

### BY MR. FLORENCE:

Q. Well, in the present state of the drainage system, is that designed to go to the Brown Brook as you've calculated it to this point in time?

MR. BLASI: Mr. Examiner, we went all through the drainage system for a day and a half, I think it is.

MR. FLORENCE: Did we?

MR. BLASI: Sure we did.

MR. DICKERSON: There was testimony received as to the fact --

MR. BLASI: Now, he didn't --

MR. DICKERSON: -- that the drainage system has not been designed.

MR. FLORENCE: Yeah, right.

MR. DICKERSON: However, the natural drainage areas would be maintained insofar as the drainage would continue to flow in the same basins.

MR. BLASI: And he -- he now testified on some entirely new subjects that were brought in and you've examined him on those. I think that we've had enough examination --

MR. DICKERSON: If Mr. Florence has a new question that hasn't been covered in the record, I'll allow it. We didn't that point on the drainage; repetition for repetition's sake is tedious.

# BY MR. FLORENCE:

Q. Will the inclusion of a drainage system different
from the natural flow have any effect in your judgment
on the velocity, the volume or the rate at which the
runoff will occur into the Brown Brook?

MR. BLASI: Oh, I have to object to

MR. DICKERSON: I'm going to let him answer the question. He's corroborating testimony of other witnesses.

MR. FLORENCE: Maybe.

- A. At which point in Brown Brook?
- Q. Following a storm.
  - A. Where?

that.

- Q. At which point in the brook or at which point in time did you ask me?
  - A. At which point in the brook?
- Q. As it would affect the downstream owners so that would relate to the brook down, say, south of Route 202.
  - A. You've got a dam proposed which will take the head off of --
- Q. Yeah.
  - A.-- some potential storms and again --
- Q. What about south of there?
  - A. I'm talking -- wait a minute. I'm talking in terms of large storms because this is what we're concerned with. Normal flows can very easily be handled. You've got a restriction down on Warren

Street. I don't foresee any additional drainage going over on the other side of that pond until such time as we get ourselves hit with another 100-year storm and if and when that happens we'll have plenty of water coming down and the same condition will prevail that would prevail regardless of whether this project was built or had never been built.

- Q. I don't understand the answer to the question and that is will there be --
  - A. I said no, there will be no effect on the downstream ownership.
- Q. All right. When you mentioned this restriction, that's this pre-cast concrete box that's going in?

  A. No, no.
- Q. What restriction do you refer to?
  - A. That is the natural existing restriction on Warren Street right now that causes the water to flood and back up on the applicant's property.
- Q. Back up on the applicant's property here?
  A. That's correct.
- Q. In terms of possible storm drainage?A. M-m h-m-m.
- Q. Have you taken that into account in the design of the

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stream?

- A. Have I taken that into account in the design of what stream, the --
- Q. Yeah. Well, you're talking about the flow in the new channel here. You're talking about inclusion of an additional amount of flow on the south side of Route 202 of sewage effluent new in addition to the storm drainage that will come down, isn't that correct, or you don't have that as part of your responsibility?

  A. No. You were paying attention when I was speaking the other day.
- Q. I may have been.
  - A. We have two systems of retaining water, one by a pond, one by a dam and the other one by another pond, the water that would normally flow down through there, and we're even restricting that flow and that's just south of the model area.
- Q. You're going to put another pond down in here?

  A. There is a pond going in down there, yes.
- Q. And what about the outflow for that, where is that going to go?
  - A. The outflow of that is being restricted so that in times of storm it would back up on our own property.

- Q. In other words --
  - A. The normal drainage.
- Q. Is that another way of saying no outflow?A. I said it's a restricted outflow.
- Q. Where is it restricted to? I mean let's take the hypothesis that the restriction -- can you use a different word besides "restriction?" I don't understand that.
  - A. O.K. I was asked the other day had I ever had advance information or had I ever seen anything on the plans and I said that the only information I had when I took charge of this portion of the project was that I was handed a set of plans for the model area. The plans showed a road profile and showed a culvert underneath -- a fairly large culvert, and I proposed to the applicant, my clients, that we revise the road profile and instead of a large culvert underneath that entrance road from Route 202 into the model area we could put a small culvert, 11-by-18-inch culvert, and we computed that we would get a backup of approximately eight to ten inches of rain in a 25-year storm from the normal drainage basin which is about 70, 75 acres, which runs and includes portions of Hope Lane,

et cetera, and comes around that area.

- Q. That's the area that flows from over here (indicating)--
- Q. -- to the east down to this pond (indicating)?

  A. You're too far over. You're too far over. Put
  your hand on Hope Lane.
- Q. Here's the access road; Hope Lane is here (indicating)?
  A. That's correct.
- Q. All right. So this goes into the model area and would drain into the pond instead of into the stream?
  A. That's right.
- Q. To the east of the model area.

MR. DICKERSON: Let the record show that the testimony is concerning Exhibit 22.

MR. FLORENCE: Yes.

- Q. Now, when there's an overflow, there's no provision for the overflow to go into the stream or it would just naturally seek the stream?
  - A. What I'm saying is in times of heavy storm, the pond will rise and it will not be able to -- it will rise because it will not be able to enter that pipe or have a great discharge through that pipe so it will back up onto our own property.

- Q. But there is a discharge pipe now?
  - A. A very small one. There is nothing there now.
- Q. That big?
  - A. Prior to that road going in there all that water could come right down there, flow right through and go right down to that box culvert down in that area.
- Q. Now --
  - A. Down at Warren Street, excuse me.
- Q. But now with the introduction of another pond, there's going to be a pipe at the bottom of the pond or what?

  A. It's a -- it's a below-grade pond, right.
- Q. Yes.
  - A. It's dug below the grade. At the surface of that pond leading under the surface, under the road, there's a culvert that, in times of storm, when the water rises in that pond would be able to start to pass through that culvert and assume its normal stream flow toward Warren Street.
- Q. All right. Now --
  - A. However, the culvert is small in size so that no great quantity of water can go through that culvert and it will be forced to back up onto our property.
- Q. Now, when you say "small," I mean what size pipe are

you referring to?

- A. 11-by-18. 11 inches.
- Q. 11 inches by 18 inches?
  - A. 11 inches by 18 inches, that's correct.
- Q. Is that pipe to go east and west?
  - A. Pipe is to go east and west.

(Continued on page 1118)

- Q. And that would go under the road which is presently under construction and on the site?
- A. That's correct.
- Q. Now --
- A. We've taken every precaution possible.
- Q. Is that part of this application?
- A. To insure that -- no, it's not part of this application but you want to know what's happening in that area and I'm trying to give you -- you've asked me questions concerning the entire property and up into Carmel, you had me down into Route 100 yesterday and that didn't concern this application. I think I'm entitled to make a few remarks.

MR. DICKERSON: O.K., gentlemen.

Q. What kind of --

# THE WITNESS: Bang!

- Q. What kind of flow will come out of that 11 by 18 pipe with the profiling of the pond?
- A. Oh, I don't know, I think it's somewhere like possibly a maximum of 10, 11 cfs, if I recall.

  I don't have that number with me.
- Q. That will --
- A. It can be checked out fast enough.

- Q. Is there a stream bed or anything like that or a channel that we would direct towards the existing -- the relocated stream or the existing stream bed or would that go in a different direction?
- A. There's a low area down right where your finger is, that entire area where she flows right now. We're just putting it right back into the original path that it would be going into.
- Q. That would really be a channeling of the waters that are gathered by this pond then, is that correct, by the outflow of this 11 inches by 18 inches?
- A. No, not channeling it, because there's a natural pass in there.
- Q. Well, on your --
- A. I --
- Q. Rather than call it channeling, can we say we're accumulating all of the excess and putting it in one place for discharge purposes?
- A. You'll have to go examine the topography and you'll see what's there and the way the water runs and all that was done was the site that that pipe was going through was selected to be the exact same pipe where the water that accumulates in that

previous area before the pond was being constructed would run and that's -- we've taken the same path, haven't diverted it or done anything else to it, and the only reason I mentioned this whole thing was to show you that we are doing everything in our powers to restrict waters and actually help --

- Q. What would you judge the pond size to be that would be here?
- A. I don't have the plans with me. I could measure it.

  I thought it was somewhere around 3, 3-1/2 acres.
- Q. Just your judgment?
- A. I may be wrong.
- Q. Well, that would be a fair rough estimate anyway, would it not?
- A. I have no idea, really. I'm going to as many things on memory, so many things that I could be saying things that I'm not even sure of and it was only brought up for the simple reason to show that we were doing everything possible to restrict flood waters that would be absolutely, in my opinion, there's absolutely no possibility of harm to the downstream owners.
- Q. Well, that's the next question, and that is the

effect on downstream owners of the gathering of the water and then splicing it through this pipe, this 11 by 18-inch pipe, and then what's going to happen? Certainly for one thing, it will have a pressure behind it, will it not?

- A. (Witness shakes head.)
- Q. Doesn't build up a head?
- A. I said it will back up 10 or 11 inches onto our property.
- Q. But if it's 10 to 11 inches that would be above the highest point of the pipe, isn't that true?
- A. I'd have to go back and get my computations on that area and start to consider that, and I'm telling you that what we've done is restrict the possible flow in that area so that at time of a flood, a 25-year storm, there would be less water running through there than would be running through there right now.
- Q. I understand that conclusion. I'm examining the facts that lead you to that conclusion, Mr. Bibbo.
- A. I'm sorry I mentioned it.
- Q. Is the pipe to be at the top of the water structure or is it to be at some place lower than the top level

- of the water structure, the exhaust pipe, for the sake of a better name.
- A. The pipe -- the pipe is exactly the same grade

  as the normal path that carried -- that has carried

  the water since time immemorial in that area. We
  have not disturbed it; we have not raised it; we
  have not lowered it.
- Q. Now, will a backing up process cause this water to be propelled out of there at a greater than a normal rate of speed that it would go if it were seeping across there or running across there without the "improvements," you know what I mean?
- A. No, it would not.
- Q. It wouldn't? Pressure wouldn't have any effect on the flow?
- A. No. I'm sorry.
- Q. Would the gathering of the water into one spot of a discharge in any way affect the --

MR. BLASI: I object to the "gathering."

He's emplained precisely what he has done and what

the situation was, --

MR. FLORENCE: I'll call it something

else.

MR. BLASI: -- what it is now, and what it has been ad nauseam.

MR. DICKERSON: I'm going to ask -- he's going to restate the question.

- Q. Using the system of discharging the water from a pipe rather than throughout the entire area that is having a discharge in one smaller location than would have been existent there previously, would that in any way affect the quantity or the speed or the direction of flow of the Brown Brook where this water would reach the Brown Brook?
- A. It would affect it. It would lessen it.
- Q. Will you explain how it would lessen the flow, by --
- A. By --

MR. BLASI: He explained it.

He explained it, Mr.Florence. You've had an answer before. He says we're taking back the water on our own land.

MR. FLORENCE: That's not the question.

MR. BLASI: This is the answer he gave.

MR. DICKERSON: Yes, it is. The

question is repetitive now.

MR. FLORENCE: The question is what will the outflow do in effect to the stream and he says it lessens the flow in the stream.

MR. DICKERSON: That wasn't the exact phrasing of the question.

MR. FLORENCE: Well, I'll rephrase the question to make it more -- to clarify the question.

Q. What will the outflow from this pond do -- how will the outflow when it reaches the stream affect the stream?

MR. BLASI He's answered that fourteen times.

- A. Are you familiar with the principles of storage in a reservoir at all versus the storage in a swamp?
- Q. I'd like to get the question answered.
- A. In order to have effective storage to decrease the actual flow you speak of improvement in an area and the increasing of greater flow and if you hold back storm waters you actually decrease the rate of flow, so what you're doing is retaining the water and not letting it rush across the land into a culvert.
- Q. Could I please --

- A. You're just holding that water back.
- Q. Could I please have an --
- A. And I will not -- I'm sorry, at this particular point I refuse to give any more technical answers than that because I'm not here to hold a seminar with you.
- Q. Could I have an answer to the question?

MR. DICKERSON: He's answered the question to my satisfaction if not yours, sir.

MR. FLORENCE: Well, I would like an answer to my question.

MR. BLASI: You've had it.

MR. DICKERSON: He's given an answer.

MR. FLORENCE: Certainly it's not responsive, not responsive to the question, not how it affects the brook, not the reservoir, not all this other nonsense.

MR. DICKERSON: Permit me, Mr. Bibbo: With this structure in place, will there be any change in effect on Brown Brook than if the -- from the situation that exists with the structure not being in place?

THE WITNESS: Yes, you're talking

about the pipe?

MR. DICKERSON: Let me rephrase it.

You got me all balled up now. O.K. You have the

flow through the marshland.

THE WITNESS: That's correct.

MR. DICKERSON: You have an effect on

Brown Brook.

THE WITNESS: That's correct.

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MR. DICKERSON: With the structure in place, will the effect on Brown Brook be in any way changed?

THE WITNESS: It will be lessened, the flow through that culvert on Warren Street will be lessened.

MR. DICKERSON: At all times or only during times of high runoff?

THE WITNESS: During times of high runoff.

MR. DICKERSON: Thank you. Does that clarify?

MR. FLORENCE: We're getting to that, yes.

MR. DICKERSON: All right.

Q. Times of low runoff it would eventually preclude runoff, is that correct?

MR. BLASI: That isn't what he said.

MR. FLORENCE: I'm just asking the question. I didn't say that he said anything.

- A. No, sir, it would not preclude runoff.
- Q. It would have an effect on periods of drought, say?
- A. There are periods of drought when the ground dries

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It's a method of storage of excess waters.

up, it does not rain and there is no water flowing, there is no water flowing naturally, period.

By itself its very presence does not preclude runoff.

- Q. Is it equally accurate to say that it's a method of storing water, period, whether or not you characterize them as excess?
- A. If I was to build an above-grade structure and impound water behind it I would be storing water. If I am building a below-grade pond and at its normal outlet elevation I simply provide a means of outlet I'm not storing water at that time.

MR. FLORENCE: I don't have any further questions.

MR. DICKERSON: Anybody else?

MR. BLASI: Just two questions.

MR. DICKERSON: I've got two behind you.

I'll give you last word.

Mrs. Port?

CROSS-EXAMINATION

BY MRS. PORT:

Q. You have stated that you have taken precautions to protect the downstream owners. Can you tell me what

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precautions you have taken since the 20th of June when Mr. DeGrace was on our property and said we definitely had a problem with the pond.

- A. Mrs. Port, the precautions that I have taken have been to plug leaks, instruct them in regrading in certain areas, build silt traps, put hay bales out, tried to prevent erosion. As far as anything else that happens between any conversation between yourself and Mr.

  DeGrace I know nothing of it. I have stated for my opinion, I stated it before, I stand to be corrected, but it is my opinion right now that there has been a colloidal suspension in that pond. I see no evidence at the inlet or at the outlet of silt deposits.
- Q. But you have done all of that, how come that the mud still does come in three months later? They certainly haven't been very effective, are they?
- A. I can't classify it as mud.

MR. DICKERSON: There is a basic disagreement between your terminology of mud and Mr. Bibbo's terminology of colloidal suspensions. You are referring essentially to the murky water?

MRS. PORT: Yes.

MR. DICKERSON: He's referring to that

phenomenon as the colloidal suspensions and he has given testimony on that before.

MRS. PORT: I just want to know what he has done, hasn't stopped that from coming in, is that true?

MR., DICKERSON: Again, as I indicated to you, when we get to your case, I suspect you will present the statements that such and such a condition existed and you'll present your testimony as to what you have observed on that. We can't take Mr. Bibbo over the coals for things that occurred when he wasn't there.

MRS. PORT: I know, but I am just saying that the things he had taken to correct it haven't helped, or does he think they have?

MR. DICKERSON: The fact that they may have or may not have helped, you are going to have to establish on the record as to what happened, as to your property, when you present your case. We has answered what he has done. If you have any other questions?

Q. The section of the stream that's going to be relocated, the original section, are there any

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et ands surrounding that section of the stream?

- A. Yes.
- Q. What will happen to them when that stream is filled in with your stuff and there is no water going through that area any longer? Will this dry up the wetlands?
- A. No, it wouldn't dry up the wetlands.
- Q. But you will be filling them in?
- A. There is one stream that I assume will be filled in and that would be the original stream that goes down as we locate it, but there are other channels and paths through that that will be allowed to run naturally.

MRS. PORT: That's all that I want

MR. DICKERSON: Mrs. Daly?

## CROSS-EXAMINATION

to know.

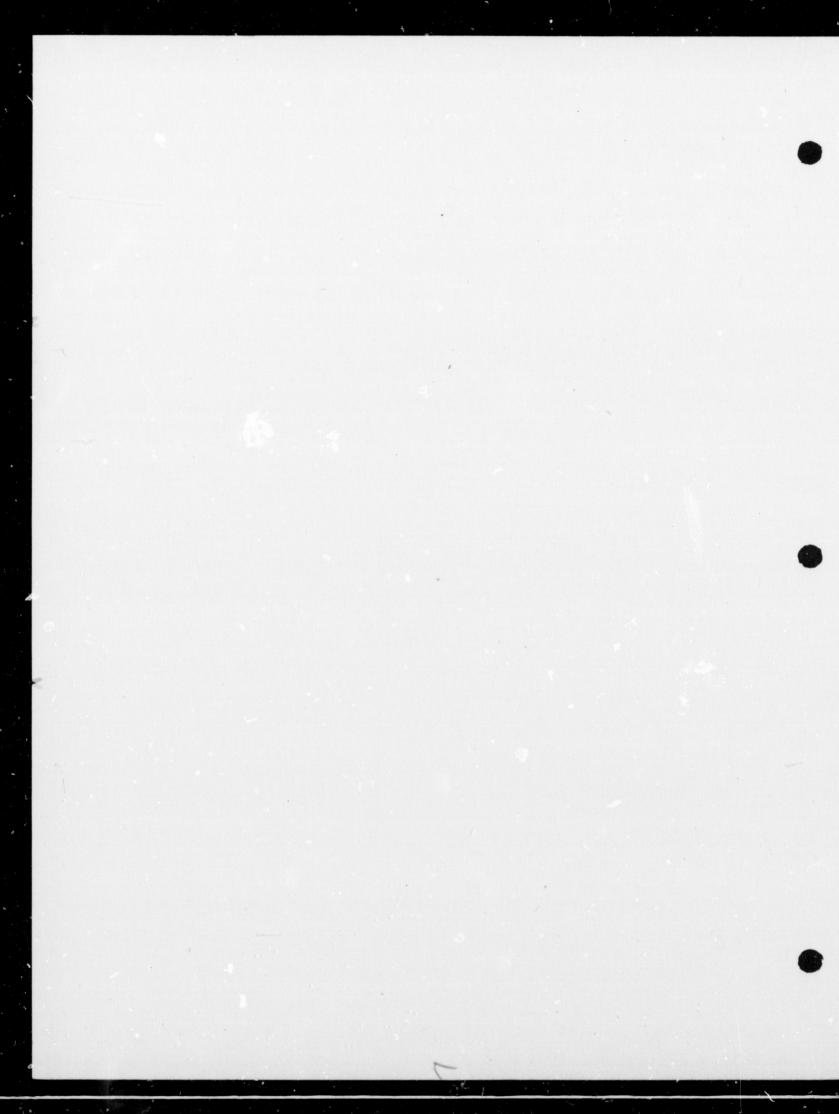
#### BY MRS. DALY:

- Q. A moment ago you stated that you have an aboveground structure, you will have water within that
  structure, that it's considered to be a storage
  place for water, right?
- A. Yes.

- Q. Well, p specifically referring to the dam.

  Is that your specific purpose for the dam then?

  I thought it was for other reasons that you were building the dam. Do you get my point?
- A. I made full statements to that yesterday, Mrs. Daly, and my opening remarks, I think, if you'd like, I'll give you a copy of them. There were several reasons for the construction of that area. One is a decorative pond. No. 2, the temporary storage of storm waters. No. 3, a road crossing. Erosion control, silt control. I forget what they were any more than that.
- Q. All right, my next question: Exactly how high above ground level is that? You may have said it before but I don't have that.
- A. How high above ground level is the what?
- Q. The dam extend above ground level?
- A. Approximately 21 feet.
- Q. Above the ground?
- A. Above the elevation of the stream bed.
- Q. I'm a little confused by that. How deep is the stream there? If you are saying above the stream, I mean above ground level, not the stream level?





(Leonard Bibbo)

MR. DICKERSON: The dam is going to be, according to testimony, 21 feet high, but because of the culvert that's running through the dam the normal water level will be 8 feet above the present stream, approximately. The dam is going to be higher than the water level because of the flow through. Is that clear how it's going to be as they presented it?

MRS. DALY: So it will be 21 minus 8, so it would be about 13 high?

MR. DICKERSON: It will be 13 feet above the water of the dam, exposed dam.

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All right, now, Warren Street rises very rapidly, not Q. only at that point but I would say the entire length of Warren Street has a very steep rise. What effect -this may have been answered before but I'd like it clarified. I don't think us women understand most of this stuff anyway. What effect will the fact that the elevation rises so as the road goes up north and with this dam extending 13 feet above the ground level or the top of the stream, and since you have not measured the depth of the lower neighbor's stream, the depth of the stream located on the neighbors below, downstream, for instance, the school, the Ippolitos, us and so on and so forth, are you certain what effect it will have on us property owners because we are considerably lower in elevation than --

MR. DICKERSON: The thrust of your question, is it what is going to happen to the stream below the flow in the present depth of stream?

MRS. DALY: Yes, without having measured the depth of the stream and the course and whatnot of the stream.

MR. DICKERSON: Testimony was presented that the dam might interrupt the flow of the stream

depending on how it was closed until it was filled to a depth of eight feet and then there would be a flow-through system.

MRS. DALY: Yes, but couldn't it also create flooding worditions?

MR. DICKERSON: Above or below the dam?

MRS. DALY: Below.

MR. DICKERSON: O.K., that's the

question.

MRS. DALY: The course of the terrain, the steep slope of the terrain.

THE WITNESS: As they say, au contraire. You are going to stop flooding conditions. You are going to help stop flooding conditions by constructing this type of thing. I know that this is a point of confusion here and I wish I knew what it was you are actually getting at, and I'm not sure, Mrs. Daly, you are quite clear on what you are trying to ask me because you keep asking me about the height of the dam and you mention about Warren Street going up in the air. If I knew exactly what it was you were trying to ask me I'm sure I could answer it clearly and correctly.

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- In other words, you take the same construction and put it on a leveler surface, you wouldn't have the same reaction insofar as the outflow is concerned as when you have the steep grade and terrain as does exist.

  For instance, if you were to open the valve during the dry season, what effect would that outflow have then on the immediate downstream owners?
  - A. Let's assume --
- Q. Because of the steep slope.
  - A. Let's assume, you keep talking about Warren Street and a steep slope, and I'm not sure you are completely correct on Warren Street.

MR. DICKERSON: Let's hold it off until the siren finishes.

# (Short pause.)

- A. You are completely confused about Warren Street.

  Warren Street rises gradually, it pitches back down
  to the north, it drops down to the north. Are you
  suggesting, are you thinking what we are suggesting is
  we are putting a dam across Warren Street?
- Q. No.
  - A. Oh. The only question you have asked, and I'll try to answer that one, what would happen in a dry period

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and we released water, what would happen to the downstream owners because of grade. The streambed itself
is not on a terrific pitch and the streambed is
completely divorced as far as grade relations or conditions from Warren Street.

MR. DICKERSON: Let Mrs. Daly try to get her question in.

Q. I just used Warren Street.

MR. DICKERSON: Maybe we best forget Warren Street and zero in on your dam question, no pun intended.

- Q. Let's just use the expression the terrain or the grade of the land from 202 up to the dam is at a decided upgrade.
  - A. Are you talking about the streambed?

MRS . PORT: Yes.

MRS. DALY: And the land in general, both. In fact, there are places where the stream is much below the terrain of the land. I mean there are places where it's very low and I haven't traversed that stream. I really don't know what it's like up above the Ippolitos.

MRS. PORT: Mr. Dickerson, I think I can

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state what she means.

MR. DICKERSON: Please try, Mrs. Port.

MRS. PORT: If they will open that out to let water out at a rush and if it comes out at a rush instead of ambling down as it does now, what will happen?

THE WITNESS: Is that the question?

MRS. PORT: Yes.

MRS. DALY: We understand each other.

A. It would not be the intent to open the gate and let the water come down all at once because if we're going to provide stream flow at all times if we open that gate all at once you know we'd lose our water, we'd have nothing more to supply you with. It would be gone overnight or the next day.

MR. DICKERSON: What would happen if you opened the valve completely?

THE WITNESS: I'd have a run of water going down through there and maybe I'd have, if I check through the culvert book, it might come out in an 18-inch pipe, 30, 35 cfs. coming down there, which is no more than is running in the May conditions in the stream right now. I could go and empty out your

pond. You are going to have a stilling basin down there to even cut it down below that. I anticipate no problem, and we just wouldn't let it all go in one shot.

MR. DICKERSON: Let me make a statement based on what he just said. At the normal pool of over eight feet of water roughly he opened the valve to drain the pond just as fast as the valve could spin, his testimony is the flow in the stream would be approximately what occurs in the normal May runoff period, your May flow, as an estimate to it. Does that give you a better picture?

MRS. DALY: Well, I didn't even mean to open it wide open. I figured it would be a controlled flow, but I just wondered what effect it would have on the streambed, that is, without opening it full blast.

number off the top of my head. I could be off by 10, 15, 20 cfs. There is an outlet structure that would act as a stilling basin, hydraulic jump basin that slows everything down. There are so many precautions being taken on it that I really cannot foresee any problems. I'll have to confess my ignorance but how could you

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compare the flow from that when you open up a valve with the flow created by nature, I mean during a rainstorm? One comes from up above the other one comes from across. Is that stupid?

A. The water runs off a hillside to a point where it enters a stream and then runs down a stream for its length, gathering more water and more velocity as more water comes into it. So during times of heavy rain you can have some quite turbulent conditions in a stream.

Q. Yes.

A. O.K.

Q. I've seen it.

A. To control that flow we build a structure and we control it. Instead of rushing down it has to slow down and spread out. Now, you open a valve down at the bottom. If I put an 80-inch valve down there and pull the plug certainly we'd get a shot out of there and it wouldn't be too hot. If we get a small pipe in there and you just can't let that water out of a small pipe, especially if you don't open it all the way, you crack it, you let water come out in a controlled condition and that would be the only time I could see

that happening is, number one, all the water in the brook stops or there is no flow coming out, normal flow coming out through our normal outward structure or, number two, we find we want to clean out that pond so we will lower some of that water and lower it and lower it until we get to a point where we can work on it and keep it open so that the water is running through while we are working on it. There is no other condition that the valve would be open. It is a small valve and I see absolutely no problems with it.

- Q. You say you were going to seed the slopes in the dam area with what kind of grass?
  - A. I think I'm going to bring some of that crabgrass over from my lawn. That grows like wildfire.
- Q. Mine is closer.
  - A. I can't tell you that. I prefer fescues with some bluegrass mixture. I'm not a landscape authority.

MR. DICKERSON: He's testified he has not prepared the grass specifications yet.

MRS. DALY: I'll tell you my reason for asking that. Mr. DeGrace told me that as far as the road they were planting rye grass this season now. I assume it's been done. I haven't been to the back of

my property. If they plan to use that, that grass completely dies off.

what Mr. DeGrace told you but I will say that one of the reasons for the rye grass being on there was a suggestion of Mr. Jonas and there may be a little confusion at this point, as we were working and as we went, instead of waiting and putting all kinds of seed down, get that rye grass down once a week, let it start to germinate. If you don't get back there and finish those slopes at least you will have some grass growing. We're throwing grass seed on it whether we're finished with the work or not just to try to get some grass to grow.

MR. BLASI: Just one clarification, Mr. Examiner. Mr. Bibbo testified that when it came to the question of the grass he would examine it carefully with landscape people and with the Department of Environmental Conservation, and whatever is a proper type of grass and which is approved by these gentlemen, it will be installed.

MR. DICKERSON: He indicated that the grass specifications have not been prepared yet.

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MRS. DALY: I guess that's all.

MR. DICKERSON: Thank you.

MR. BLASI: No questions.

MR. DICKERSON: Mr. Bibbo, short and sweet, I hope. Have you taken any soil borings in the vicinity of the dam and dam access as yet?

THE WITNESS: Yes, I have done test pits in there.

MR. DICKERSON: Will you submit copies of the borings or your log reports?

THE WITNESS: I submitted them to Mr.

Roch. I will see if I have another copy here to give
you. These are test pits and in addition to these
test pits there have been borings ordered. The rig
has not as yet come in. As soon as they are ready we
will forward those results.

MR. DICKERSON: Are these test pit locations indicated on the plans?

THE WITNESS: Yes.

MR. DICKERSON: On Exhibit 34. O.K., they are so noted on the first sheet. I'm going to mark for identification as Exhibit No. 39 two pages on the stationery of Bibbo Associates, Consulting Engi-

neers, entitled Heritage Hills, Somers, New York, Engineers' Report, Deep Test Pits. These test pits were dug under your supervision?

THE WITNESS: Under my direct supervision, yes, sir.

MR.DICKERSON: You identified or made the description of the soils contained therein?

THE WITNESS: Yes, sir.

MR. DICKERSON: Any objection to receiving them in evidence for what they are worth?

The date is August 28th, 1973.

No objection, Exhibit 39 is received in evidence.

(Exhibit No. 39, Engineers' Report,

Deep Test Pits, marked for identification and received
in evidence, this date.)

(Continued on page 1145)

that exhibit?

MR. BLASI: Is that Exhibit 39 or 40,

MR. DICKERSON: 39, sir.

O.K., Mr. Bibbo, you've stated measurements have been made in the stream at various times. You have heard the estimate of maximum sewage flow approximately 702,000 gallons per day?

THE WITNESS: That's correct.

MR. DICKERSON: Could you give me some feeling for the relationship of sewage flow to the stream flows? What are the flows in the stream as you have observed them generally, a range with season or any pipe like this?

my calculation, and my measurements are based on -- based on the Manning formula. They're based on slopes, coefficients, computed in -- at the time my drainage study was being made and that was somewhere in the month of May. Drainage flows in that stream are roughly averaging somewhere around 30, 35 cfs. The sewage flow --

MR. DICKERSON: I can make the

calculation, thank you.

THE WITNESS: All right.

MR. DICKERSON: And that is

approximately during May?

THE WITNESS: That's correct.

MR. DICKERSON: Sometime, O.K.

Do you plan to design and install anti-seepage collars on the --

THE WITNESS: Yes, sir, that -- the

MR. DICKERSON: -- on the dam?

THE WITNESS: The plan that is there is -- one of the points of discussion was, of course, the class "B" type structure and what is there is, you know, it's sized for dimension and sized for approximate thickness of concrete.

It hasn't been detailed in any way whatsoever.

All requirements of the Department of Conservation and the State Department of Transportation will be met as well as all good construction practices, whether required or not.

MR. DICKERSON: Thank you. I have no further questions. You're excused.

plan --

MR. FLORENCE: May I?

MR. DICKERSON: Whoops!

MR. FLORENCE: Before you excuse him, may I inquire just in relation to this new Exhibit
No. 39 which was introduced in evidence?

MR. DICKERSON: Please. It's in for what it's worth anyway.

MR. FLORENCE: Yes, thank you.

### BY MR. FLORENCE:

- Q. I notice you have water seepage on Test Pit No. 1 at 7 feet 6 inches.
- A. M-m h-m-m.
- Q. Now, that is indicated on Exhibit No. 34 as the pit which is on the south side of the dam, is that correct?
- A. (Witness nods head.)
- Q. So that -- and that there's also water seepage at 4 feet 6 inches on Test Pit No. 2 which is on the north side of the dam?
- A. Right.
- Q. Is that correct also?
- A. You're reading it. I guess it is.
- Q. I see you have four test pits but I see test pit

- No. 3 is indicated here where you don't show any seepage. Does that mean that there was no seepage when you dug down to the 9 feet?
- A. I reported on those test pits exactly what I observed as I had those holes dug for me.
- Q. All right. What would the effect of seepage be upon the construction of the dam if you have seepage of that water? That indicates the water table, does it not?
- A. It indicates that there's some ground water there, yes.
- Q. Would this ground water essentially be a water table in that area? I don't really know. I don't want to quibble about terms but something that I might understand.
- A. I had some water running there. I did not notice or obtain a static level but if I obtained a static level, I may have had it on the other side which I did not.
- Q. Anyway, this idea of water seepage is where the water is coming and filling into the hole at that level, isn't that right?
- A. No, the -- the water seepage as I reach a certain

level, the water is coming out of the bank at that level.

- Q. That's right.
- A. I may go two feet past it and not hit it any more.
- Q. Yes, all right. What effect would that have on the construction of the dam itself?
- A. It may require some sort of cutoff trenches, possibly.
- Q. They're not presently in the construction program of this dam?
- A. No, they're not because it's considered to be a detail of construction. We will have additional borings made to greater depths to determine actually just what the nature of the method used may be or if necessary at all.

MR. DICKERSON: If I may interject, this is the best information you have available at this time?

THE WITNESS: It is.

MR. FLORENCE: And those were taken in the dry time of the year?

MR. BLASI: See what the date is on it, don't say "the dry time."

## BY MR. FLORENCE:

- Q. Would that seepage or that water table vary at any time during the year, do you think, based on your experience?
- A. I have no -- it possibly could if it's down deep enough and if it's something that's being carried from any kind of a distance, it may not vary.

  Maybe if there are all kinds it may vary. We'll know very soon when we get in there and get our borings and we'll know a couple of months later what our levels are.
- Q. Was this boring information something that suggested to you that you have to change the plans from the plans as they're already offered?
- A. What that information suggested to me was that

  I have a stable foundation, the materials in there
  basically in the area are very good and I can
  build a dam in this area.
- Q. Notwithstanding the existence of water?
- A. Notwithstanding the existence of water, that's right.

MR. FLORENCE: No further questions.

MR. DICKERSON: Mr. Bibbo, you're

THE WITNESS: Thank you, sir.

I'm going to run before someone else

calls me.

(Whereupon the witness was excused.)

MR. DICKERSON: Mr. Blasi?

MR. BLASI: At this point the

applicant rests.

MR. DICKERSON: Thank you. I'm going to take a very brief break, about five minutes.

Before we do, I'm going to ask Mr. Vazzana and Mr.

Florence if they want to consider who's going to go first.

MR. VAZZANA: Suppose Mr. Florence does.

MR. DICKERSON: O.K.

(Whereupon a short recess was taken.)

MR. DICKERSON: Ladies and gentlemen -ladies and gentlemen, we have concluded Phase I.
Shall we continue, Mr. Florence?

MR. FLORENCE: Well, if it please

Mr. Dickerson, I have a request to make at this

time and it deals with the scope of this hearing

and the scope of my objection and the limitations to

my objection to some portion of the application and not to others.

My client's objection is not directly involved in the matters which are set forth in the notice of hearing. Succinctly stated, my client's objection is to the placement itself, the physical placement of the sewage plant upon the premises as it's proposed in the -- inferentially and indirectly on some of the exhibits which are involved in this hearing.

We also have some concern as to the extent of the aquifer from which water would be drawn to the extent that it might affect the water supply presently on his premises. However, I think that that issue would fairly -- has been fairly resolved and discussed at this hearing, and the purpose of my request at this time is to do either of two things:

Either to expand the hearing with appropriate notice to encompass, pursuant to the provisions under the Environmental Conservation Law, both as they existed prior to September 1st, 1973 and as they have been amended as of that date, or to

schedule another separate and distinct hearing which would deal with the location of this new facility.

Now, as I read the law, the hearing is a matter of the discretion of the Commissioner of the Department of Environmental Conservation or his representatives or agents as the language so notes, both before and after September 1st, 1973. But it seems to me that on reflection as to the issues that are noted to be in this hearing, that the placement of that plant which is the subject of our written objection are matters which are academic or derivative to the placement itself. I refer specifically to the relocation of the stream and the placement of the outflow structure.

I have, for my client, expert testimony dealing with that which I would be ultimately prepared to produce as it would affect the placement of a sewage effluent facility or sewage treatment plant on the property of the applicant.

I must confess to a fair amount of ignorance to both the pre-existing and the new law in my bumbling about trying to see just the extent

or the scope to which this hearing has found itself to be defined, and I would at this time ask either the representatives of the Department of Environmental Conservation if they have any information which would help solve and resolve this question in my mind and pending their answers on that, I would then make other suggestions if I could, Mr. Dickerson.

MR. DICKERSON: No. 1, the expansion of the hearing?

MR. FLORENCE: Or their intention to have a hearing in relation --

MR. DICKERSON: Or two, to put it bluntly, a hearing under the SPDES procedure.

MR. FLORENCE: And limiting it and my area of interest as to the placement of the plant itself, and I draw from --

MR. DICKERSON: May I refine "placement" slightly?

MR. FLORENCE: The location.

MR. DICKERSON: As to drainage basin,

as to --

MR. FLORENCE: Just the deposits of effluent really.

MR. DICKERSON: Effect of the relocation of the stream or the exact utility area?

MR. FLORENCE: The objection is to the deposit of effluent upon the -- into the stream which traverses the property and I think that because of the deposits, the deposit is a function or a derivative of the placement of the plant as I understand what testimony has been given by the experts who have already testified.

I refer to Section 17-0303, 17-0701, 17-0505 and as they are amended, as authority for, No. 1, the hearing for the issuance of permits for the installation and operation of disposal plants or systems together with the construction, and 0505 indicates that such a thing is prohibited without this, what we've been referring to as SPDES permit. 0701 makes unlawful the discharge of effluent into the New York State waters and then relates in subdivision (b) construction of such a plant and that is my primary concern. I've indicated that both in my opening statement and even before my opening statement in my -- in the

writings that we were required to produce to
the Commissioner and his agents in order to even
have this underlying hearing. So that I guess I
have to say that the hearing is -- doesn't encompass
all of the things of which we complained in writing
and I also say that, as I read the law, it appears
that a hearing is appropriate in relation to the
things for which we do complain.

MR. DICKERSON: That's having to do with Chapter 801 of the Laws of 1973.

MR. FLORENCE: Yes.

MR. DICKERSON: Thank you.

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MR. FLORENCE: And then I'm not prepared to go on until I know.

MR. DICKERSON: I am going very shortly, while I start looking for something in here, to take a break. Shall we use the next 10 minutes for solemn meditation, if I can use those words?

MR. FLORENCE: Existential meditation.

MR. DICKERSON: Mr. Vazzana, do you have something to say? Do you want a moment or two to react?

MR. BLASI: Yes, that would be nice.

MR. DICKERSON: Let's take a break for about 10 minutes.

(Short recess.)

MR. DICKERSON: We have a request which is tantamount to a motion. We're going to entertain comments from various parties but especially the attorneys present.

Mr. Blasi, I'll hear your reply comment.

MR. BIASI: Mr. Examiner, this application was filed on April 26, 1973 with the Department of Environmental Conservation. As a result of that filing, and I think in accordance with what occurred

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subsequent to the filing, the position was taken by the Department that this application would primarily be treated as a water supply application and that as an incident to the water supply application the items relating to the relocation of the stream, the dam and the outfall would be the subject of a public hearing. And you, Mr. Examiner, have in this record very clearly stated, perhaps more than once, the scope of the hearing and the items before the Examiner including the one item, whether the plans provide for the proper protection of the supply over the proper treatment, whether the plans are justified by public necessity, whether they provide for proper and safe construction, whether they are just and equitable to other municipalities affected, to the inhabitants thereof with particular consideration being given to their present and future necessities for water supply, and whether they make fair and equitable provisions for the determination of payment and any and all legal damages to the persons and property which would result from the execution of the plans, and then the other observations were with reference to the stream relocation and dam. Water becomes waste water. This is what I learned.

MR. DICKERSON: I'm sorry for the interruption.

MR. BLASI: Not at all, sir.

Water becomes waste water and there has been submitted and admitted into evidence a full waste water report. There has been extensive testimony taken including the testimony this morning of Mr. Calvin Weber of the Westchester County Department of Health. I'm not going to repeat here what he testified to. You are well aware of what he testified to, and he was cross-examined at length by counsel for the primary objectant who has made the request with which we are now concerned.

We now have, in effect, a request which we believe is entirely improper and unnecessary. It is improper because it is our position that despite the enactment of the repeal of Section 17-0701, the so-called SPDES statute, the Department has before it an application in which not only is there a full notice but one of the fullest hearings which I have ever attended in scope from the nature of the hearing. I'm talking about the scope and what has been covered. We believe that it was not the intention of this enact-

ment in any way to affect or interfere with the hearing which is before this Hearing Examiner. We believe that the Department of Environmental Conservation should conclude the hearing that it has before it. We believe that the testimony in evidence that has been submitted on behalf of this application should be fully considered by the Department and that in that connection a statute such as this, which is merely a supplemental rather than creating any new concepts, supplemental disciplines if we may call it that, where discretion is given to the Commissioner. That I think is something which after a review of what has happened here is something for future consideration. I don't think that the enactment of the statute should forestall or in any way prevent the conclusion of this hearing as you have started it and as you have continued it. We have not restricted in any way the testimony or the evidence, and much of it has to go, a great deal of it, to the sewage disposal treatment plant came into this in full force and effect. I don't think it's been ignored. And certainly the treatment of the effluent has been fully described and the point of discharge and the manner in which

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it is to be discharged, and the applicable standards are all there in the record.

Now, at this point we believe that the position of the objectant in the light of the intention of the Legislature, in the light of the fact that the powers given to the Department of Environmental Conservation and particularly the Commissioner, to make rules and regulations relating to this new addition that we should not at this point be placed in any position of further delay on what is before this Board and what is before this Hearing Officer. If later on there is some material that the Department of Environmental Conservation feels should be submitted, certainly anybody can submit it if the Department requests it.. We have always submitted material that the Department has requested. The instructions are our engineers are always to make available the facts and to keep in full communication not only with the Department but with the Department of Health, with the Town, with every authority that has jurisdiction. I understand Mr. Florence's position, he wants to enlarge -- the alternative is he wants to enlarge this hearing to a so-called SPDES hearing; that's one of

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the alternatives. Am I correct in that?

MR. FLORENCE: That's one of the alternatives that I suggested.

MR. BLASI: His other position is that we proceed with this hearing, am I corre t in that, and finish this hearing?

MR. DICKERSON: I believe the other alternative first was an enlargement of this hearing or a commitment that a hearing under Chapter 8 or 1 of the Laws of 1973, the SPDES Act would be held in the future.

MR. BLASI: Now, a commitment from whom, Mr. Examiner? There is nobody in this room that can give this commitment.

MR. FLORENCE: I don't think we should -- I'm sorry.

MR. DICKERSON: Let him finish his statement, please.

MR. FLORENCE: Yes.

MR. BLASI: There is no one in this room that could give such a commitment. And in my opinion, the orderly procedures as envisioned by the Environmental Conservation Law with which these applicants

have fully met the intention of the existing law and the intention of the amendment was not to tear assunder the procedures before this Department or to create an insurmountable procedural morass. There is no, if I may quote without being dramatic, if I may Quote Abe Lincoln, "Any ridiculous result must never be implied in any law." And what we're heading for here is a ridiculous result. It is our position, Mr. Examiner, that we have come here, we have presented our affirmative case. We are ready to hear from the objectors. We wish this proceeding to go forward as prescribed by law. We do not feel that we are in any legal position to make any legal commitments. We do not feel that you, Mr. Examiner, are in any position to make any commitment, under the state of the law with respect to Mr. Florence's request, and I say it most respectfully.

MR. DICKERSON: Thank you.

Mr. Vazzana, do you have any comment?

MR. VAZZANA: Yes, I have one short comment. I may say this: I think we have to have the 615 applications. I think the Hearing Officer has those applications. The determination has been made

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on the 615 applications. Have they been admitted?

MR. DICKERSON: No.

MR. VAZZANA: Want to see that?

MR. DICKERSON: Mr. Vazzana?

MR. VAZZANA: Thank you.

MR. DICKERSON: This was uncovered at random. This was the same document (indicating).

Let's take a break for a minute while all counsel present and all parties may examine that if they wish. It has not been marked for identification yet.

(Discussion off the record.)

MR. DICKERSON: Let's go back on the record, ladies and gentlemen.

Mr. Vazzana, do you have any statement you wish to make?

MR. VAZZANA: Yes, one further statement I do want to make especially as to making any commitment. That's a determination which the Commissioner must make. Certainly at the moment we cannot make that determination. It's subject to the determination of the Commissioner. We have nothing further to say on this point.

MR. DICKERSON: Mr. Alexander?

MR. ALEXANDER: No, I have no statement to make with respect to Mr. Florence's request.

MR. DICKERSON: This has generally been a legal point. Does anybody have any -
(There was no response.)

MR. DICKERSON: O.K. I have taken the following step: I've called my superior in Albany.

I have requested a determination be made by tomorrow if possible as to whether a commitment may be made in the name of the Department to hold a SPDES hearing.

This information will not be available before tomorrow. If the information is not available by the time we have an hour or so of our hearing tomorrow, I will specifically rule on your motion or request, Mr.

Florence. I've got to wait time for word from Albany if a commitment may be made in the name of the Department.

In the interim, I would like to proceed, reserving your rights, with other parties who care to make statements for the rest of the afternoon and possibly for the first hour tomorrow morning. We will use as much tomorrow, the rest of today and tomorrow

as we can. At that point I'd like to let the matter drop as an open matter if I may. I may receive authorization to make a commitment in the name of the Department which will bring these proceedings to an end which will be in the near future. If I don't, I will make my rulings on the subject tomorrow if that is satisfactory to all parties.

MR. BLASI: I don't see any other alternative.

MR. DICKERSON: In the meantime we've got at least a half an hour if we can use it. Any objection to continuing at least until tomorrow morning, Mr. Florence?

MR. FLORENCE: I have no objection if this will keep the thing moving.

MR. KIPP: Let's get it over with.

MR. DICKERSON: Mrs. Saia?

MRS. SAIA: Mrs. Port has a statement.

MR. DICKERSON: Mrs. Port will be

speaking for you both then?

MRS. PORT: Well, my husband was writing a statement and I would rather --

MR. DICKERSON: Would you rather --

can Dr. Port be here tomorrow morning probably?

MRS. PORT: I think he will be.

MR. DICKERSON: I mean during the

course of the morning before noon?

MRS. PORT: I expect he will be.

MR. DICKERSON: All right, if you

prefer to wait until then. Representative from the City of New York?

(There was no response.)

Let the record show that the representatives of the City of New York attended the first day of hearing. The representative was here the second day of hearing. Anybody see him here the third day?

MR. KIPP: No.

MR. DICKERSON: And that the representatives of the City of New York have not attended hearings since the second day.

Mr. Weber, you were called in as a filler if I may put it that way, in making statements. Do you have any comments, any material you wish to present on behalf of the New York State Department of Health?

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MR. WEBER: I have no further comments.

MR. DICKERSON: Thank you.

Mr. Alexander, do you have any witnesses you wish to call or anything on behalf of the various agencies of Westchester County?

MR. ALEXANDER: No, I have not.

MR.DICKERSON: Thank you.

Mrs. Bahret?

(There was no response.)

Mr. Mally on behalf of the Somers

Volunteer Fire Department?

(There was no response.)

Let the record indicate that Mr. Mally appeared at the first day of the hearing, requested to reserve his right to appear and has not been seen since.

Mr. Oehler?

(There was no response.)

Mrs. Daly?

MRS. DALY: Yes. I think all of us --

MR. DICKERSON: At this point, I will

advise you, you have two choices: You may make an unsworn statement or any statement of opinion you wish.

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If you want to present testimony or material stated under oath, you may do so. You have the right to counsel and you have the right to call witnesses if you so desire.

MRS. DALY: Oh, I'm unprepared and couldn't speak now.

MR. DICKERSON: O.K. Then if you just want to make a statement this is your right.

MRS. DALY: No, I was going to ask a question but too late.

MR. DICKERSON: Well, for lack of anything else, let's hear the question in general and see what we can do for you.

MRS. DALY: Well, all of us living on the perimeter of Heritage Hills are confused as to the exact location of the Heritage Hills plant.

MR. DICKERSON: The sewage treatment plant?

MRS. DALY: I brought that out earlier, on one of the earlier days, you know, perhaps about 10, 12 days ago. We were led to believe, as I pointed out, that the plant would be located as portrayed in the plot in the area of the rectangle signifying the

sewage treatment plant area.

MR. DICKERSON: You -- by this, are you referring to the utilities area as marked on Exhibit 22?

MRS. DALY: Yes, yes.

MR. DICKERSON: O.K.

MRS. DALY: And at the time I asked a question during our ZBA hearings as to the exact location of the plant and I was told that the plant was located in the exact spot where the letter "A" appeared on that particular plat. Recently I was over at Heritage Hills looking over some maps and one of them was -- was the map on the sewage treatment plant. So up in the upper right-hand corner, I think you call an area site map or something, or site location or whatever it is, site location map and, you know, the smaller version of it, and it showed the rectangle which is to embody the sewage treatment plant which I had thought embodied the sewage treatment plant but then they had a legend at the side "Sewage Treatment Plant" and the plant was actually located down beneath this rectangle.

Now, I've seen it in one or more of the

maps that you have there now and as a result, we are all confused now as to whether the map was -- whether the plant was moved down or whether the -- I was told at the time in Heritage Hills office that the map was in error, the site location map was in error, but now we're all in a quandary as to where it is.

MRS. PORT: It may be on Exhibit 35.

MR.DICKERSON: I'm looking at Exhibit
26 which is the general plan of the sewage effluent
discharge pipe with the details of the effluent discharge structure and according to the plan before mecould I have a scale please, a large -- somebody have
a large scale handy or did Mr. Bibbo leave?

Exhibit 26 has no scale on it. Exhibit 25 indicates a portion of the same area. It indicates that the plan is at a scale of one inch equals 50 feet. The feature outlining the proposed sewage treatment plant on both exhibits, 25 and 26, have exactly the same linear dimensions, 3.8 inches. With that kind of an approximation it appears that the proposed sewage treatment plant as shown by Exhibit 26 is approximately 225 feet east of Warren Street. If you will give me another minute? (Short pause).

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Approximately 1,040 feet, within the limits of rapid measuring, north of Route 202. Any comments from the applicant? I've just scaled this off to give this matter an approximate distance.

MRS. DALY: May I see the map, sir?

MR. DICKERSON: Please do. On the

record, this is the record we have before us. This
shows approximately 225 feet to the treatment plant
and approximately 1,040 feet north of Route 202. This
is Exhibit 3 which is an outline of the property.

Exhibit 4, which does not show it. Let's go off the

record for aminute.

(Discussion off the record.)

MR. DICKERSON: While off the record a general consensus of the approximate location of the sewage treatment plant, approximately 1,040 feet north of Route 202, approximately 225 east of Warren Street and a distance of at least 200 feet, and east 202 or 220 feet south of the northern portion of the properties of Heritage Hills and their utility area. We've got the location roughly nailed down.

Mrs. Daly, I think that gets part of your question down. Do you have any more? At this

general statement covering your feelings, or I should say opinion on this property, things that are concerning you. We'll wrap it up that way. You have some concerns. You've got certain things that you wanted to find out. Would you care to make any statement at this time as to whether you are in favor of the project or opposed to the project or in favor of portions of it or opposed to portions of it.

MRS. DALY: Well, throughout this hearing I've sort of felt there has been an implication made that an economic factor seemed to prevail in favor of Heritage Hills. Now, roughly there are about 15 of us residents directly affected by the presence of the sewage treatment plant, the relocation of the stream, the effluent and et cetera, and et cetera. In my case, I have a dam on one side and a sewer plant on the other side. That puts us in a very difficult position insofar as the saleability of our homes are concerned. Now, the developer is concerned as a strong economic concern. By the same token, all of us have a pronounced concern regarding the dollars and cents end of it and I can't see why more consideration

wouldn't be given to those of us directly affected insofar as though our individual losses or -- I don't want to use the word loss -- our in lividual costs would not compare. The aggregate of our individual costs would certainly not compare with any surplus charges that would accrue to the developer because of any possible change. However, there are 15 different, or roughly 15 different, families involved, none of which are in what you would call a high bracket salary income and I see no reason why we should have to suffer, at least a few thousand dollars a piece insofar as the saleability of our homes is concerned, and now the question is whether our homes are even saleable, because of the presence of the sewage treatment plant so close to the homes, either next to or directly across. It is located very close to Warren Street and very close to the Nardellis, and I know I for one would not want to buy a home in an area like that and I don't think I'm an isolated instance. I think consideration should be given to those of us living on the perimeter or thereabouts as to the damaging effects it has to our assets.

MR. DICKERSON: Thank you very much.

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I think we'll go into a break now. We'll resume at 9:30 tomorrow morning.

MR. VAZZANA: May I make just one statement, very short? In view of the fact, Mr. Blasi, I believe you have rested, the state may not rest at this point pending determination which you indicated --

MR. DICKERSON: I think the simplest thing to do, ladies and gentlemen, is that I have made a request to see if a statement can be authorized by the Commissioner or by me in his behalf. I would be something worse than a fool if I took it upon myself to commit the Commissioner to anything. I would like to proceed insofar as we can tomorrow morning. I hope to have an answer in the early part of the hearing tomorrow morning. If we do not have an answer I will entertain a motion again and make my ruling.

MR. BLASI: Do I understand, Mr. Commissioner, that the objectants would then go forward with their case tomorrow morning?

MR. DICKERSON: I do not know what the objectants are going to do, at least for the first hour or so of the proceedings tomorrow. I think Dr.

Port might be here. I would like to hear the individual parties. The position of the objectors, as I understand it, is quite contingent on any word we may get in the first hour of business tomorrow.

Depending on the outcome of any word we receive I will reserve all parties' rights to make statements as they may deem necessary. I'm not going to throttle people off. I do not foretell the future. So I would like to continue as best we can until approximately noon tomorrow with the course of this proceeding. Mr. Florence has consented to that.

MR. VAZZANA: May I make one -MR. BLASI: If Mr. Florence has
to have expert testimony available tomorrow, I
would like to be apprised of it because, obviously,
I must have my experts present while his experts

MR. DICKERSON: Mr.Florence?

MR. FLORENCE: I would like to know what direction we're going. My inclination would be to believe that anything which might be introduced beyond which is included as a subject of that public notice notwithstanding all the latitude we would have, would upon review by any legal authority be considered hearsay. I am saying to you that the thrust of the expert testimony would be marginally and more than likely hearsay to these issues because it deals specifically with those areas that we find objectionable and it doesn't relate itself in any way to the rest of the hearing, the subject of the hearing. There are parts of this hearing to which we have no opposition. There are parts of the hearing which we say are conditions precedent and are putting the cart in front of the horse because our basic objection is

testify.

to that one very small issue, and my inclination is to say to you that no, I am not going to produce expert testimony until I know what the State Commissioner is going to do. Once I know that, then I will act accordingly or try to react responsibly.

MR. DICKERSON: We do have several parties apparently ready to appear tomorrow.

Hopefully Dr. Port, Mr. Oehler I presume will reappear, maybe an unwarranted presumption, but I don't think that our reconvening tomorrow morning would be fruitless.

I would like tomorrow morning to serve a good purpose if the hearings are going to proceed so that we will have not lost any time.

In effect, I'm just deferring, Mr. Florence, until either I receive some word or I have to make a ruling which I will do tomorrow.

MR. BLASI: I would like Mr. Florence --

MR. DICKERSON: Anything that I --

MR. BLASI: Excuse me.

MR. DICKERSON: -- indicate as to directions that are before me would be at this moment,

I sincerely believe, premature, and if I may be permitted a colloquialism, I would like at least for the morning session to make hay while the sun shines.

MR. BLASI: No doubt; I agree with you, Mr.Examiner. The question that comes to my mind is that it becomes burdensome upon an applicant to keep bringing back his experts to sit in attendance awaiting the testimony on the other side and under that circumstance, I think I would ask that there be cooperation to the effect that that may be reduced to a minimum.

MR. FLORENCE: You have my assurance of that. I have no desire to --

MR. DICKERSON: Will you be able to proceed at least with a portion of your case tomorrow if we come to you in that --

MR. FLORENCE: From what I'm told, one of the State's witnesses, that is an employee of the State, still remains ill. He would be part of the case, would be the first part of the case.

After that I would say no.

MR. VAZZANA: I'm uncertain whether he

will appear tomorrow.

MR. BLASI: I didn't hear that.

MR. VAZZANA: I say I don't -- I'm not certain as to whether he will be able to appear tomorrow.

MR. DICKERSON: Physically, you mean?

MR. VAZZANA: Physically.

MR. FLORENCE: He's ill.

MR. VAZZANA: He's ill.

MR. DICKERSON: I trust this fact can be ascertained by the time we reconvene tomorrow.

MR. FLORENCE: I'm telling you don't bring your experts, I think, at least as I feel now.

MR. DICKERSON: O.K., I'll lay it on the line. It's my determination to await the word from the Commissioner's office in Albany as to ruling on your specific motions. If I may speak for the Department and I am so authorized to provide for a commitment on behalf of the Department for a SPDES hearing, I will make that commitment if authorized and we will proceed with the conclusion of this hearing. If I am unable to make that commitment, I will not rule on your request for the

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simple fact that any ruling I will make will be subject to the determination of the Commissioner. I will take the matter directly to the Commissioner and reserve until I receive his ruling. For the balance of the day, I will endeavor to get as far with the current proceedings as possible.

MR. BLASI: That includes expert testimony, Mr. Dickerson?

MR. DICKERSON: As far as we can go tomorrow, but I will not pre-judge or commit the Commissioner. I hope to have word, yea or nay. If the --

MR. FLORENCE: It makes a lot of difference.

MR. DICKERSON: I realize that, and
I can see no other way to be equitable to all parties
at this time without exceeding my authority and
all I can say is we will stand adjourned until
9:30 tomorrow morning.

(Whereupon at 5:03 p.m. the hearing was adjourned to reconvene on Friday, October 5th, 1973, at 9:30 a.m.)

Witnesses:	Direct	Cross Redirect	Recross
Calvin E. Weber (Rec.)		983	
Ralph Manna	1062	1073	
Leonard Bibbo (Rec.)		1089	

			EXHIBITS	For Id.	Evid.
Ex.	No.	38-A			1087
Ex.	No.	38 <b>-</b> B			1087
Ex.	No.	39 -	Engineers' Report, Deep Test Pits, etc.		1144

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